

SECTION D

CArizona Revised Statutes Annotated Currentness

Title 9. Cities and Towns

Chapter 4. General Powers

Article 8. Miscellaneous (Refs & Annos)

→ § 9-500.14. Use of city or town resources or employees to influence elections; prohibition

A. A city or town shall not use its personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections. Notwithstanding this section, a city or town may distribute informational reports on a proposed bond election as provided in § 35-454. Nothing in this section precludes a city or town from reporting on official actions of the governing body.

B. Employees of a city or town shall not use the authority of their positions to influence the vote or political activities of any subordinate employee.

C. Nothing contained in this section shall be construed as denying the civil and political liberties of any employee as guaranteed by the United States and Arizona Constitutions.

CREDIT(S)


Added by Laws 1996, Ch. 286, § 1.

LAW REVIEW AND JOURNAL COMMENTARIES

Use of public funds to influence the outcomes of elections. Angela C. Poliquin. 46 Ariz.L.Rev. 423 (2004).

LIBRARY REFERENCES

Elections  311.2(1).

Municipal Corporations  918.

Westlaw Topic Nos. 144, 268.

C.I.S. Elections § 334(1).

C.J.S. Municipal Corporations §§ 1664 to 1674.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

Statute that prohibits a city or town from using its resources to influence outcomes of elections is not limited in its application to instances in which a communication by city uses direct terms such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," or "reject"; express advocacy may be based on communication that, taken as a whole, unambiguously urges a person to vote in a particular manner. Kromko v. City of Tucson (App.

Div.2 2002) 202 Ariz. 499, 47 P.3d 1137, redesignated as opinion, review denied. Municipal Corporations ¶108.10

To violate statute prohibiting a city or town from using its resources to influence outcomes of elections, communication must clearly and unmistakably present a plea for action and identify the advocated action; it is not express advocacy if reasonable minds could differ as to whether communication encourages a vote for or against a candidate or encourages the reader to take some other kind of action. Kromko v. City of Tucson (App. Div.2 2002) 202 Ariz. 499, 47 P.3d 1137, redesignated as opinion, review denied. Municipal Corporations ¶108.10

Reasonable minds could differ as to whether communications by city in television public service announcement and Internet web site encouraged a vote for transportation-related propositions on special referendum ballot, and therefore those communications did not violate statute prohibiting a city or town from using its resources to influence outcomes of elections; words that would directly indicate express advocacy were absent, and communications provided information regarding propositions, city's traffic problems, and proposed solutions, albeit in a positive light. Kromko v. City of Tucson (App. Div.2 2002) 202 Ariz. 499, 47 P.3d 1137, redesignated as opinion, review denied. Municipal Corporations ¶108.10

County elected officials may sign letters or have their names and official titles appear when supporting or opposing ballot measures that will go before the voters. Regardless of whether county elected officials use their official titles, they may not use county public resources to fund, facilitate, or support such communications. Op.Atty.Gen No. I07-008.

Sections 9-500.14 and 11-410 prohibit cities and counties from using their resources, including spending general fund monies, to influence the outcome of elections; even educational materials that do not expressly advocate for or against a ballot issue may fall within this prohibition, depending on the specific facts and circumstances. Op.Atty.Gen. No. I00-020.

The limitations in §§ 9-500.14 and 11-410 apply before a measure qualifies for the ballot. Op.Atty.Gen. No. I00-020.

A. R. S. § 9-500.14, AZ ST § 9-500.14

Current through the end of the Forty-Eighth Legislature, Second Regular Session (2008), and also includes election results from the November 4, 2008 general election

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END OF DOCUMENT

SECTION E

CArizona Revised Statutes Annotated CurrentnessConstitution of the State of Arizona (Refs & Annos)Article IX. Public Debt, Revenue, and Taxation

→ § 7. Gift or loan of credit; subsidies; stock ownership; joint ownership

Section 7. Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state.

CREDIT(S)

Amended by Laws 1998, S.C.R. 1007, § 3, approved election Nov. 3, 1998, eff. Nov. 23, 1998.

HISTORICAL AND STATUTORY NOTES

Laws 1998, S.C.R. No. 1007 provides that the proposed amendment is to be submitted by the Secretary of State to the electorate at the next general election as provided by Const. Art. 21 and is to become valid when approved by a majority of the qualified electors voting thereon and upon proclamation by the governor.

Proposition 102, based on Laws 1998, S.C.R. 1007, proposing amendment to the Constitution of Arizona in Article 9 by amendment of § 7, was approved by the electors at the November 3, 1998 general election as proclaimed by the governor on November 23, 1998.

Proposition 102, based on Laws 2003, H.C.R. 2028, proposing amendment to the Constitution of Arizona in Article 9 by amendment of § 7, relating to the prohibition against governmental entities acquiring stock ownership by allowing an exception for interests in technology or intellectual property created or acquired by the Arizona board of regents and institutions under its jurisdiction, was rejected by the electors at the November 2, 2004 general election as proclaimed by the governor on December 1, 2004.

CROSS REFERENCES

Irrigation districts, exemption from this section, see Const. Art. 13, § 7.

LAW REVIEW AND JOURNAL COMMENTARIES

Arizona adopts an "equitable and reasonable consideration" test to identify gifts of public funds to private entities. 27 Ariz.L.Rev. 579 (1985).

COLA wars: The ongoing battle to eliminate cost-of-living adjustments to the pensions of Arizona retirees. Marc R. Lieberman, 27 Ariz.Att'y 16 (June 1991).

Constitutional prohibition against municipal subsidizing of private interests. Public purpose doctrine rejected. 17 Ariz.L.Rev. 860 (1975).

General improvement districts statute, planned community development. Law & Soc.Ord., 1972, p. 264.

Protecting public funds: A history of enforcement of the Arizona constitution's prohibition against improper private benefit from public funds. Nicholas J. Wallwork and Alice S. Wallwork, 25 Ariz.St.L.J. 349 (1993).

Tax increment financing, constitutionality in light of Arizona voter approval requirements. 24 Ariz.L.Rev. 107 (1982).

Underpinnings of the public trust doctrine: Lessons from Illinois central railroad. 33 Ariz.St.L.J. 849 (2001).

LIBRARY REFERENCES

Municipal Corporations ¶870, 872.

States ¶119.

Westlaw Topic Nos. 268, 360.

C.J.S. Municipal Corporations §§ 1573 to 1579, 1581, 1610 to 1615, 1618 to 1619.

C.J.S. States §§ 204, 206 to 212, 214 to 215, 218, 221.

RESEARCH REFERENCES

ALR Library

78 ALR 5th 133, Validity And Construction Of School Choice Programs--Post-Lemon v. Kurtzman.

152 ALR 495, Constitutional Or Statutory Provisions Prohibiting Municipalities Or Other Subdivisions Of The State From Subscribing To, Or Acquiring Stock Of, Private Corporation.

115 ALR 1456, Constitutionality Of Statute Authorizing State To Loan Money Or Engage In Business Of A Private Nature.

100 ALR 600, Right Or Duty To Carry Insurance On Public Property.

83 ALR 464, Permissible Classification Of Insurance Companies Which Will Justify Discrimination Among Them By Taxing Statutes.

Treatises and Practice Aids

11 Arizona Practice A.R.S. § 9-402, Sale And Disposition Of Property; Advertising For Bids; Publication; Donation; Easements.

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1. Validity

The public trust doctrine is a constitutional limitation on legislative power to give away resources held by the state in trust for its people. San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa (1999) 193 Ariz. 195, 972 P.2d 179. Public Lands ¶142.5

2. Construction and application

State constitutional "gift clause" prohibits governmental bodies from depleting the public treasury by giving advantages to special interests, or by engaging in non-public enterprises. State v. Heinze (App. Div. I 1999) 196 Ariz. 126, 993 P.2d 1090, as amended, review denied. Municipal Corporations ¶871; Municipal Corporations ¶873

In determining whether transaction violates this section prohibiting gift of public monies to private association, reality of transaction, both in terms of purpose and consideration must be considered; panoptic view of facts of each transaction is required. Wistuber v. Paradise Valley Unified School Dist. (1984) 141 Ariz. 346, 687 P.2d 354. Municipal Corporations ¶873

Where this section of Arizona Constitution proscribing state or political subdivision thereof from giving or loaning its credit in aid of individual, association or corporation was taken from Montana Constitution, decisions of Montana supreme court interpreting the provision were persuasive in interpreting Arizona article. Industrial Development Authority of Pinal County v. Nelson (1973) 109 Ariz. 368, 509 P.2d 705. Municipal Corporations ¶873; States ¶119

State can part with its money or property only by agreement and for valuable consideration. Yeazell v. Copins (1965) 98 Ariz. 109, 402 P.2d 541. States ¶89

This section, limiting the power of municipalities to expend public money, is generally construed as directed against benefits at public expense attempted in behalf of individuals, corporations, or associations acting independently and conducting some enterprise of their own such as are usually conducted for profit and are commercial in nature. City of Phoenix v. Michael (1944) 61 Ariz. 238, 148 P.2d 353. Municipal Corporations ¶871; Municipal Corporations ¶873

Worthiness of claim alone never authorizes granting of state funds to claimant. Udall v. State Loan Board (1929) 35 Ariz. 1, 273 P. 721. States ¶119

Legislature can grant relief, when claim is founded in justice and equity, without thereby donating state's money. Udall v. State Loan Board (1929) 35 Ariz. 1, 273 P. 721. States ¶119

3. Purpose

Purpose of gift clause of State Constitution is to prevent governmental bodies from depleting public treasury by giving advantages to special interests or engaging in nonpublic enterprises. Maricopa County v. State (App. Div. I 1996) 187 Ariz. 275, 928 P.2d 699, review denied. Municipal Corporations ¶871

Constitutional prohibition against gift of public funds without public purpose prevents governmental bodies from depleting public treasury by giving advantages to special interest or by engaging in nonpublic enterprises, even if transaction has surface indicia of public purpose. Maricopa County v. State, 1994, 178 Ariz. 140, 871 P.2d 261, vacated 187 Ariz. 275, 928 P.2d 699, review denied. States ¶119

This section prohibiting making gift of public monies to private association was intended to prevent governmental bodies from depleting public treasury by giving advantage to special interest or by engaging in nonpublic enterprises; either objective may be violated by a transaction even though that transaction has surface indicia of public purpose. Wistuber v. Paradise Valley Unified School Dist. (1984) 141 Ariz. 346, 687 P.2d 354. Municipal Corporations ¶873

Provision of this section prohibiting a town from making gifts, donations, or granting subsidies to private enterprises or pledging its credit or investing public funds in a private enterprise was intended to avoid depletion of public treasury or inflation of public debt by engagement in nonpublic enterprise. Town of Gila Bend v. Walled Lake Door Co. (1971) 107 Ariz. 545, 490 P.2d 551. Municipal Corporations ¶870; Municipal Corporations ¶871

Purpose of this section, providing that neither the state nor a subdivision shall give or loan its credit in the aid if, or make any donation to any individual, corporation, or become a subscriber to or shareholder in, any corporation, was to avoid the depletion of public treasury or inflation of public debt by engagement in nonpublic enterprises, and the provision does not prohibit the state and local government from dealing with private enterprises, nor forbid a school district from contracting for fire insurance on its buildings. State v. Northwestern Mut. Ins. Co. (1959) 86 Ariz. 50.

340 P.2d 200. Municipal Corporations ⚡873; Schools ⚡90; States ⚡119

4. Subdivision of state

Irrigation district was not within this section forbidding ownership of corporate stock by municipality or other "sub-division of state". Maricopa County Municipal Water Conservation Dist. No. 1 v. La Prade (1935) 45 Ariz. 61, 40 P.2d 94. Waters And Water Courses ⚡228.5

5. Public purpose

Public funds are to be expended only for public purposes and cannot be used to foster or promote purely private or personal interests of any individual. Town of Gila Bend v. Walled Lake Door Co. (1971) 107 Ariz. 545, 490 P.2d 551; Proctor v. Hunt (1934) 43 Ariz. 198, 29 P.2d 1058.

Disclaiming the state's interest in watercourse bedlands that may be part of the public trust, without a particularized assessment of the validity of equal footing claims, is both a violation of State Constitution's gift clause and invalid under the public trust doctrine. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ⚡36(1); States ⚡119

Any reliance on judicial precedent, when discussing navigability in context of determining whether state has public trust duties toward particular watercourse bedlands under equal footing doctrine, should be predicated on a careful appraisal of the purpose for which the concept of navigability is invoked. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ⚡1(3)

Although individual states are free to pass laws that address the disposition of public trust lands, this power is subject to the obligation of the state to preserve the trust; thus, trust land may only be used in ways that promote the trust's purposes or improve the public's use of the resource. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. States ⚡89

State's transfer of public trust property is valid as long as the grantee's use does not impair or interfere with the public interest. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. States ⚡89

Legislature was obligated, when enacting legislation that disclaimed state's interest in certain watercourse bedlands, to apply federal *Daniel Ball* test for determining whether watercourses are navigable such that their bedlands became public trust property under equal footing doctrine upon state's entry into Union. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ⚡1(3)

State statute that defined "bed" of a watercourse as all land below the low-water mark, in context of determining whether watercourse bedlands were subject to the public trust protection applicable to navigable watercourses under equal footing doctrine, conflicted with federal test for navigability established in *Daniel Ball* case. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ⚡1(3)

Statute requiring "clear and convincing" evidence to support administrative commission's finding of a watercourse's navigability, in context of determining whether watercourse bedlands were public trust lands under equal footing doctrine, was contrary to federal *Daniel Ball* test for determining navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ⚡1(7)

Statute providing for presumption that a watercourse was nonnavigable, and thus that its bedlands were not public

trust lands under equal footing doctrine, if any determination of nonnavigability in a public proceeding existed for the watercourse or a portion or reach of the watercourse, was contrary to federal *Daniel Ball* test for navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters 1(7)

Statute providing for presumption that a watercourse was nonnavigable, for purposes of determining whether its bedlands were public trust property under equal footing doctrine, if watercourse was not used or susceptible of being used for both commercial trade and travel, was in conflict with federal *Daniel Ball* test for navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters 1(7)

Statute that provided for a mandatory finding of nonnavigability for watercourses that flow only in direct response to precipitation, in context of determining whether watercourse bedlands are public trust lands under equal footing doctrine, was contradictory to federal *Daniel Ball* test for navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters 1(3)

Statute directing that a watercourse was presumptively nonnavigable, for purposes of determining whether its bedlands were public trust property under equal footing doctrine, if no sustained trade and travel occurred both upstream and downstream in the watercourse was in conflict with federal *Daniel Ball* test for navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters 1(7)

Statute directing that a watercourse was presumptively nonnavigable, for purposes of determining whether its bedlands were public trust property under equal footing doctrine, if no profitable commercial enterprise was conducted by using the watercourse for trade and travel was in conflict with federal *Daniel Ball* test for navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters 1(7)

Statute directing that a watercourse was presumptively nonnavigable, for purposes of determining whether its bedlands were public trust property under equal footing doctrine, if vessels customarily used for commerce on navigable watercourses at time of state's admission into Union in 1912, such as keelboats, steamboats, or powered barges, were not used on the watercourse was in conflict with federal *Daniel Ball* test for navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters 1(7)

Statute providing for presumption that a watercourse was nonnavigable, for purposes of determining whether its bedlands were public trust property under equal footing doctrine, if diversions that created impediments to navigation were made for irrigation purposes under Desert Land Act or any other federal act or were made to provide water to lands included in a federal reclamation project or an Indian reservation was in conflict with federal *Daniel Ball* test for navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters 1(7)

Statute providing for presumption that a watercourse was nonnavigable, for purposes of determining whether its bedlands were public trust property under equal footing doctrine, if any flotation of logs or other material that occurred or was possible on the watercourse was not and could not have been regularly conducted for commercial purposes was contrary to federal *Daniel Ball* test for navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters 1(7)

Statute providing for presumption that a watercourse was nonnavigable, for purposes of determining whether its bedlands were public trust property under equal footing doctrine, if there were bridges, fords, dikes, man-made water conveyance systems, or other structures constructed in or across watercourse that would have been inconsistent

with or impediments to navigation was in conflict with federal *Daniel Ball* test for navigability, which looked at watercourse's conditions and did not require that travel be continuous or unimpeded. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ¶1(7)

Statute providing for presumption that a watercourse was nonnavigable, for purposes of determining whether its bedlands were public trust property under equal footing doctrine, if transportation in proximity to the watercourse was customarily accomplished by methods other than by boat was contrary to federal *Daniel Ball* test for navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ¶1(7)

Statute directing a presumption that a watercourse was nonnavigable, for purposes of determining whether its bedlands were public trust property under equal footing doctrine, if the United States did not regulate the watercourse under the federal Rivers and Harbors Act of 1899 was contrary to federal *Daniel Ball* test for navigability; federal act's definitional truism that act applied to navigable watercourse of United States did not mean act had actually been applied to every navigable watercourse. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ¶1(7)

Statute governing determination of whether a watercourse was navigable, so as to render its bedlands public trust land, violated federal *Daniel Ball* test for navigability by prohibiting administrative commission making that determination from taking into account: (1) any use of watercourse under flood conditions, (2) use of ferries to cross watercourse, (3) any evidence of fishing from watercourse's banks, or (4) fact that water appropriated for beneficial uses before statehood was part of ordinary and natural condition of watercourse. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ¶1(3)

Because it is responsibility of courts to give potential public trust forfeitures of watercourse bedlands "a close look," courts must not merely rubber-stamp the legislature's decision. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ¶36(1)

Provisions of state statute defining "bed" of a watercourse and setting standards for determining whether watercourse was navigable, such that its bedlands were subject to public trust protection, were invalid by operation of the preemption doctrine to the extent that those provisions conflicted with federal *Daniel Ball* test for navigability. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ¶1(3); Navigable Waters ¶36(1); States ¶18.91

Statute that disclaimed state's interest in certain watercourse bedlands violated State Constitution's gift clause and public trust doctrine, where legislature relied on recommendations from administrative commission that made its findings under previously enacted statute whose standards for determining navigability of a watercourse were preempted by the federal *Daniel Ball* standard. Defenders of Wildlife v. Hull (App. Div.1 2001) 199 Ariz. 411, 18 P.3d 722, reconsideration denied. Navigable Waters ¶36(1); States ¶119

Public purpose was served by legislation that permitted any taxpayer who owned property used for agricultural purposes, but who failed to file timely annual certification and received nonagricultural valuation as result, to file omitted certification and obtain refund of difference in ad valorem taxes, for purposes of determining whether legislation violated gift clause of State Constitution, in light of legislative policy to provide favorable agricultural valuation methodology for farmland abutting urban area, to prevent urban encroachment. Maricopa County v. State (App. Div.1 1996) 187 Ariz. 275, 928 P.2d 699, review denied. States ¶119; Taxation ¶2461

Challenged provisions of legislation substantially relinquishing state's "equal footing" interest in riverbed lands were invalid under public trust doctrine and gift clause of Arizona Constitution, though legislation was enacted in response to valid concern with unsettling of record title to extensive land holdings throughout state; legislation failed

to provide mechanism for particularized assessment of validity of equal footing claims that it relinquished, continuing value of land subject to such claims for purposes consistent with public trust, equitable and reasonable consideration for claims that could be relinquished without impairing public trust, and conditions that could be necessary to any transfer to assure that public trust interests remained protected. Arizona Center For Law In Public Interest v. Hassell (App. Div.1 1991) 172 Ariz. 356, 837 P.2d 158, review dismissed. Navigable Waters §37(2); States §119

Court reviewing validity under gift clause of Arizona Constitution of dispensation of public funds or property must be satisfied that dispensation serves public purpose and that dispensing public entity has received consideration which is not so inequitable and unreasonable that it amounts to abuse of discretion, thus providing subsidy to private entity. Arizona Center For Law In Public Interest v. Hassell (App. Div.1 1991) 172 Ariz. 356, 837 P.2d 158, review dismissed. States §119

Factors to be considered by reviewing court determining whether dispensation of public property violates gift clause of Arizona Constitution when property in question is within public trust, in addition to general public purpose and fair consideration factors, are degree of effect of dispensation on public trust uses, impact of dispensation on public trust resource, impact of dispensation when examined cumulatively with existing impediments to full use of public trust resource, impact of dispensation on public trust resource when that resource is examined in light of primary purpose for which resource is suited, and degree to which broad public uses are set aside in favor of more limited or private ones. Arizona Center For Law In Public Interest v. Hassell (App. Div.1 1991) 172 Ariz. 356, 837 P.2d 158, review dismissed. States §119

Loan or expenditure of arbitrage earnings on proceeds of industrial development bonds may be constitutionally permissible, even if some private individual or organization thereby derives special benefit, as long as public purpose is thereby served. State ex rel. Corbin v. Superior Court In and For County of Maricopa (App. Div.1 1988) 159 Ariz. 307, 767 P.2d 30. States §119

Governmental body may disburse funds only for public purpose. Wistuber v. Paradise Valley Unified School Dist. (1984) 141 Ariz. 346, 687 P.2d 354. Municipal Corporations §861

Merely because private individual or corporation uses public funds or property for a "public purpose" is not sufficient, in and of itself, to remove use from constitutional prohibition against a city subsidizing a private corporation. City of Tempe v. Pilot Properties, Inc. (App. Div.1 1974) 22 Ariz.App. 356, 527 P.2d 515. Municipal Corporations §873

Whether loan or donation by state or subdivision thereof is prohibited by this section depends on whether it is for a public purpose and, if it is, it is not prohibited even though some organization derives special benefit from project. Industrial Development Authority of Pinal County v. Nelson (1973) 109 Ariz. 368, 509 P.2d 705. Municipal Corporations §870; Municipal Corporations §871; States §119

In determining whether a proposed expenditure of public funds is constitutionally valid as being devoted to a public use or purpose, no hard and fast rule can be formulated; rather, each case must be decided with reference to object sought to be accomplished and with reference to the degree and manner in which such object affects the public welfare. Town of Gila Bend v. Walled Lake Door Co. (1971) 107 Ariz. 545, 490 P.2d 551. Municipal Corporations §861

Provision of this section prohibiting state or a subdivision of the state from giving or loaning its credit or making any donation or grant to an individual, association, or corporation does not apply where the public purpose is the primary object of an appropriation and the benefit to a corporation is incidental. Op.Atty.Gen. No. 181-003.

Requiring a purchaser of certain tickets to also contribute to a booster foundation created to support a State university's athletic programs serves a public purpose and, provided that the benefit the public receives is adequate, this practice does not violate the gift prohibition of Arizona's Constitution. Op. Atty. Gen. No. 199-028.

6. Gift or loan of credit

The incurrence of expenditures by city in payment of its dues assessments as a member of Arizona Municipal League is not prohibited by this section prohibiting cities from giving or "loaning credit" in aid of private individuals. City of Glendale v. White (1948) 67 Ariz. 231, 194 P.2d 435; City of Phoenix v. Michael (1944) 61 Ariz. 238, 148 P.2d 353.

Legislature's reclassification of possessory interests as property assessable at one percent full cash value, which had previously been taxable at 25 percent of full cash value, was not an unconstitutional gift of public funds to taxpayers who had leases on Indian trust lands; reclassification statute was intended to encourage commercial development of reservation property and promote Indian self-sufficiency and economic welfare. Pimalco, Inc. v. Maricopa County (App. Div.1 1997) 188 Ariz. 550, 937 P.2d 1198, States ¶119.

Use of public funds or property that is for public purpose and whose value is not so much greater than value of benefit received by public that exchange of one for the other is disproportionate will not contravene gift clause of State Constitution even though particular persons or organizations benefit specially from such use. Maricopa County v. State (App. Div.1 1996) 187 Ariz. 275, 928 P.2d 699, review denied. Municipal Corporations ¶871.

Gift clause of State Constitution was implicated by legislation permitting any taxpayer who owned property used for agricultural purposes, but who failed to file timely annual certification and received nonagricultural valuation as result, to file omitted certification and obtain refund of difference in ad valorem taxes. Maricopa County v. State (App. Div.1 1996) 187 Ariz. 275, 928 P.2d 699, review denied. States ¶119; Taxation ¶2461.

Bill permitting property owners to file retroactive certifications of agricultural use in granting refunds of taxes assessed under nonagricultural use classifications was unconstitutional gift of public money for private use; only owners who ignored explicit filing requirements or had repossessed their land after selling persons who did so would benefit from statute, taxing entity gained nothing it would not have gotten through taxpayer's timely compliance with pertinent statute, and county would be required to expend administrative resources verifying petitions, valuing property, processing refunds and paying interest on money refunded and gift was not sufficient public purpose. Maricopa County v. State, 1994, 178 Ariz. 140, 871 P.2d 261, vacated 187 Ariz. 275, 928 P.2d 699, review denied. States ¶119; Taxation ¶2110.

To be valid under constitutional provision prohibiting gift of public funds without public purpose, concession given in exchange for public funds must be more than mere gratuity with no possible value enuring to state or its political subdivisions. Maricopa County v. State, 1994, 178 Ariz. 140, 871 P.2d 261, vacated 187 Ariz. 275, 928 P.2d 699, review denied. States ¶119.

Contract whereby city waived sewer connection fee in exchange for sewer line easement was not void as violative of constitutional prohibition against making gift of public funds, absent showing that city had given away more than it would have cost to obtain easement through eminent domain proceedings. City of Casa Grande v. Tucker (App. Div.2 1991) 169 Ariz. 143, 817 P.2d 947, review denied. Municipal Corporations ¶712(2).

Bond issues of industrial development authority to provide sums to be loaned to private company for purchase and installation of air pollution control facilities in smelter and for acquisition by authority of real property and construc-

tion of air pollution control facilities and machinery did not violate constitutional prohibition against state or subdivision thereof from giving or loaning its credit in aid of individual or corporation. Industrial Development Authority of Pinal County v. Nelson (1973) 109 Ariz. 368, 509 P.2d 705. Municipal Corporations ¶870; States ¶119

The erection of temporary housing for war veterans and their families through expenditure of municipal funds is not unconstitutional as a loan of municipal credit. City of Phoenix v. Superior Court of Maricopa County (1946) 65 Ariz. 139, 175 P.2d 811. Municipal Corporations ¶871

Money spent by a municipality to prevent or eradicate crime and disease is for the public good and general welfare, even though effect is felt by a given class more than by community at large, and such expenditures do not constitute a "gift or loan or municipal credit" within this section. City of Phoenix v. Superior Court of Maricopa County (1946) 65 Ariz. 139, 175 P.2d 811. Municipal Corporations ¶871

A.R.S. § 42-1322(D), relating to a \$1,000 income tax subtraction for persons affected by the recently enacted transaction privilege tax (sales tax) collection acceleration program, is not a gift of public monies, nor "special" legislation, in violation of the Arizona Constitution. Op.Atty.Gen. No. 190-049.

Community college district may use its auxiliary enterprise fund monies to grant employees and board members interest-free loans to purchase computers or to purchase personal computers and loan them to employees and board members for use at home for periods up to three months without violating Const. Art. 9, § 7. Op.Atty.Gen. No. 185-051.

Where teacher agrees to perform his duties at a salary of rate specified in his written contract, school district may not pay the teacher an additional amount for the same services. Op.Atty.Gen. No. 183-065.

Payment to teacher for services which teacher is already legally obligated to perform would constitute a gift in violation of this section. Op.Atty.Gen. No. 183-065.

Appropriation to state development board did not constitute a violation of Const. Art. 4, Pt. 2, § 19, prohibiting local or special laws, or a gift or loan of credit prohibited by this section, even though funds so appropriated would go to a specific individual, corporation, or association without competitive bidding on the goods or services purchased, and though face of appropriation indicated a specific odd amount including both dollars and cents, where appropriation would be for a public purpose within meaning of board's powers and duties. Op.Atty.Gen. No. 62-15.

Guaranteeing of loans by state board of education, acting as state board of vocational education, made to students or former students of vocational agriculture under 25 years of age and restricted to Arizona youth farm loan fund did not constitute a gift or loan of credit prohibited by this section. Op.Atty.Gen. No. 61-10.

Establishing of a revolving fund, under A.R.S. § 15-1274 (renumbered as A.R.S. § 15-1124), to meet necessary current expenses connected with student activities did not constitute a violation of this section prohibiting subdivisions of state from giving or loaning its credit in the aid of any individual, association, or corporation. Op.Atty.Gen. No. 57-66.

7. Donation or grant

The state tax credit of up to \$500 for donations to school tuition organizations (STO) was not a "gift" from state to sectarian schools, within meaning of Anti-Gift Clause of State Constitution; the credit did not involve extravagant dissipation of public funds and the tax credit amounts were not state property. Kotterman v. Killian (1999) 193 Ariz. 273, 972 P.2d 606, certiorari denied 120 S.Ct. 283, 528 U.S. 921, 145 L.Ed.2d 237, certiorari denied 120 S.Ct. 42,

528 U.S. 810, 145 L.Ed.2d 38, States ¶119

In determining whether there has been a donation or a subsidy in violation of this section prohibiting gift of public monies to private association, public benefit to be obtained from private entity as consideration for payment or conveyance from public body may constitute valuable consideration, but this section may be violated if value to be received by public is far exceeded by consideration being paid by public; in reviewing such questions, courts must not be overly technical and must give appropriate deference to findings of governmental body; limiting Heiner v. City of Mesa, 21 Ariz.App. 58, 515 P.2d 355 (1973). Wistuber v. Paradise Valley Unified School Dist. (1984) 141 Ariz. 346, 687 P.2d 354, Municipal Corporations ¶873

School district's payment of president of teachers' association to perform duties of director of employee relations did not constitute a donation or subsidy to private association in violation of this section prohibiting gift of public monies to private association, as subsidies performed by president were not disproportionate to consideration paid. Wistuber v. Paradise Valley Unified School Dist. (1984) 141 Ariz. 346, 687 P.2d 354, Schools ¶90

Donation of public property to a private corporation for purpose that is deemed by city fathers to be for the public good is within constitutional prohibition of this section against city's subsidizing a private corporation. City of Tempe v. Pilot Properties, Inc. (App. Div.1 1974) 22 Ariz.App. 356, 527 P.2d 515, Municipal Corporations ¶873

The case law rule governing determination of whether a gift or donation has been granted by a municipality to a private corporation is same as rule determining validity of municipal contracts generally. City of Tempe v. Pilot Properties, Inc. (App. Div.1 1974) 22 Ariz.App. 356, 527 P.2d 515, Municipal Corporations ¶873

If consideration received by city for lease of city land was so inequitable and unreasonable that it amounted to an abuse of discretion, a gift or donation by way of subsidy would have been bestowed on lessee in violation of constitutional prohibition against a city subsidizing a private corporation. City of Tempe v. Pilot Properties, Inc. (App. Div.1 1974) 22 Ariz.App. 356, 527 P.2d 515, Municipal Corporations ¶873

Laws 1939, § 56-107 (see, now, A.R.S. § 34-241) providing, in letting of contract for expenditure of tax money, for five percent preference to contractors who had paid county and state taxes for the two successive years immediately prior to making of bid was not violative of this section forbidding grants. Schrey v. Allison Steel Mfg. Co. (1953) 75 Ariz. 282, 255 P.2d 604, States ¶119

The municipal housing law enabling municipalities to remove unsafe and unsanitary housing conditions and substitute therefor safe and sanitary dwellings for persons of low income is not unconstitutional as authorizing a "gift" or "loan of credit" to persons of low income. Humphrev v. City of Phoenix (1940) 55 Ariz. 374, 102 P.2d 82, Municipal Corporations ¶871

Rev.Code 1928, § 541 (see, now, A.R.S. § 9-700), requiring city to purchase realty sold for delinquent assessments for street improvements and for which there is no purchaser, and commanding appropriation from general fund of amount bid and payment thereof to special fund for improvements, was not unconstitutional as violating this section, prohibiting municipality from giving or loaning its credit in aid of or making donation or grant to, individual, since improvements are for a public purpose. Wise v. First Nat. Bank (1937) 49 Ariz. 146, 65 P.2d 1154, Municipal Corporations ¶871

Laws 1933, Ch. 72, providing for payment of taxes delinquent June 1, 1933, in semiannual installments, was not unconstitutional as violating Const. Art. 2, § 13 and U.S.C.A. Const. Amend. 14, § 1, forbidding special privileges and guaranteeing equal rights, since resulting classification of taxpayer is based on reasonable and natural difference. Biles v. Robey (1934) 43 Ariz. 276, 30 P.2d 841, Constitutional Law ¶3564

Public officer's unauthorized voluntary acts cannot obligate state even morally, so as to authorize donation of state funds to persons affected. Udall v. State Loan Board (1929) 35 Ariz. 1, 273 P. 721. States 119

Laws 1927, Ch. 40, §§ 1 and 2, relieving landowners from payment of wasted portion of money loaned to rebuild dam under state loan board's supervision was not unconstitutional as donating state's funds. Udall v. State Loan Board (1929) 35 Ariz. 1, 273 P. 721. States 119

Const. Art. 9, § 7 prohibiting state and its subdivisions from making donations or grants does not preclude a donation of hospital district facilities to a person or private corporation if the donation serves a valid public purpose and is supported by sufficient value received by the district as consideration for the donation. Op. Atty. Gen. No. 184-159.

School districts could expend funds for student meal and lodging when such expenditures are necessary to fulfil an educational function of the district. Op. Atty. Gen. No. 181-045.

School district's "barracks-type" frame buildings which had some market value could not be donated to a charitable organization in view of provisions of this section prohibiting the state or a subdivision of the state from making any donation or grant to any individual, association, or corporation. Op. Atty. Gen. No. 180-189.

Purchase of tools for a resident of a department of corrections halfway house so that resident could obtain employment was an expenditure which had a valid purpose for which public monies could be expended. Op. Atty. Gen. No. 78-189.

Arizona state justice planning agency could, for a public purpose, expend monies to match a federal grant even though a portion of the monies would incidentally benefit the other four-corner states, and, in the context of cooperative efforts with local, county, state, and federal authorities, the strike force of the drug control district could assist those authorities in location in which the cooperating agencies have jurisdiction. Op. Atty. Gen. No. 78-14.

Maintenance of state trails was a direct benefit to the public at large, and, therefore, five hours of maintenance and cleanup work on state trails by individuals who thereby were to receive a certificate signed by the governor and a patch which was purchased by the state and awarded to such persons, and which related to the "One for the Trail" project constituted a valuable consideration which justified the award of the patch, and, therefore, award of the patch to such person in such program would not be a gift of state property in violation of provision of this section prohibiting the state from making any donation to any individual. Op. Atty. Gen. No. 77-199.

State fair commission cannot make donations to horse shows, livestock shows, county fairs, or events which are not state fair exhibits; unless commission is in receipt of a certification from county pursuant to A.R.S. § 11-258(c), commission is precluded from giving assistance to presentation of a function such as the state livestock show. Op. Atty. Gen. No. 65-16-L.

School district court donate obsolete text books which had no sales value to a worthy organization which would utilize them as tools of learning, where the books had been traded in on new text books and publisher-seller of new text books had authorized such disposal by school district. Op. Atty. Gen. No. 62-101-L.

8. Indemnification

Provision of A.R.S. § 26-322, on the subject of flood relocation and land exchange, that the director of the division of emergency services could enter into contracts to indemnify public or private agencies or other entities or any individual against liability by virtue of injury, lawsuits, or damages in connection with the relocation and exchange

does not violate this section prohibiting the state from giving or loaning its credit in the aid of, or to make any donation or grant, by subsidy or otherwise to any individual, association, or corporation; however, the legislature would be well advised to amend the provision to clearly set forth the limits of the indemnification authority granted to the director. Op.Atty.Gen. No. I80-182.

9. Extinguishing indebtedness

Remission of 10 per cent. interest on delinquent taxes by statute providing for payment of such taxes in installments, was not violation of this section against extinguishing indebtedness of individual to state since such interest is "penalty" and not "debt". Biles v. Robey (1934) 43 Ariz. 276, 30 P.2d 841. Taxation ¶2118

The remission by Laws 1921, Ch. 49 (repealed) to mortgagees of interest on loans of institutional funds is a donation to individuals in violation of this section. Rowlands v. State Loan Bd. of Ariz. (1922) 24 Ariz. 116, 207 P. 359. States ¶119

10. Private enterprise

Assistant director for state personnel could develop a program related to reference checking and could undertake research regarding the current procedures followed by other public and private enterprises to develop an adequate program for use by the state personnel division, and, though division could not expend funds to engage in a purely private enterprise, research to develop a program for use by division, a public purpose, would be permissible. Op.Atty.Gen. No. R75-748, p. 69, 1976-77.

11. Industrial incentive rewards

Where ownership and control over water main which town agreed to construct from water tank to door of corporation's plant were to remain in the town, and agreement involved supplying of water for purposes of preserving and protecting lives and property, agreement had purpose of providing direct benefit to public at large and, thus, did not violate prohibition of this section against a town making gifts, donations, or granting subsidies to private enterprises, notwithstanding fact that corporation stood to be directly benefited if fire occurred at its plant and was indirectly benefited by reduced fire insurance premiums. Town of Gila Bend v. Walled Lake Door Co. (1971) 107 Ariz. 545, 490 P.2d 551. Municipal Corporations ¶871

State could, following appropriate legislation, offer a reward to individual, association, or corporation, which develops first producing oil well in state on land other than Indian reservation land provided reward is not to be made to any special class, citizen, or class of citizens or confer a privilege or immunity not equally applicable to all citizens or corporations coming within terms of offer; contract law would govern, and proposed reward legislation could limit reward to well located on lands from which state would derive a direct pecuniary gain, i.e., 12 1/2 percent from state-owned lands, 37 1/2 percent of 12 percent from federally owned lands, and 12 percent from lands held in fee. Op.Atty.Gen. No. 64-4.

12. Conveyances

Transaction by which state university conveyed medical center and leased land underlying it to self-sustaining non-profit corporation, in return for base rental fee of \$10 per year and corporation's assumption of existing liabilities of over \$11 million, did not constitute "subsidy" or "donation" of state property to corporation in violation of State Constitution; existence of center as nonprofit hospital served public purpose, transfer eliminated need for public funds to recoup hospital's operating losses, and hospital's operations were still subject to control and supervision of public officials. Kromko v. Arizona Bd. of Regents (1986) 149 Ariz. 319, 718 P.2d 478. States ¶119

City could convey city land to hospital for use in constructing new hospital building shown to be needed by community despite fact that it received no cash consideration for land and did not advertise for bids thereon, and despite prohibition of this section against city's making any donation or grant to any individual, association or corporation, since public benefit derived from erection of hospital building was adequate consideration for transfer. Heiner v. City of Mesa (App. Div.1 1973) 21 Ariz. App. 58. 515 P.2d 355. Municipal Corporations ¶225(5); Municipal Corporations ¶871

13. Leases

Legislature's reclassification of possessory interests as property assessable at one percent full cash value, which had previously been taxable at 25 percent of full cash value, was not an unconstitutional gift of public funds to taxpayers who had leases on Indian trust lands; reclassification statute was intended to encourage commercial development of reservation property and promote Indian self-sufficiency and economic welfare. Pimalco, Inc. v. Maricopa County (App. Div.1 1997) 188 Ariz. 550. 937 P.2d 1198. States ¶119

Material issues of fact existed with respect to whether city's lease of land to private corporation for 99 years at annual rental of \$1 per year, with lessee required to use part of leased premises to develop major league baseball spring training complex, resulted in a prohibited bestowal of subsidy on a private corporation, thus precluding summary judgment with respect to validity of the lease. City of Tempe v. Pilot Properties, Inc. (App. Div.1 1974) 22 Ariz. App. 356. 527 P.2d 515. Judgment ¶181(15.1)

A city's lease of its hospital property and equipment to nonprofit hospital corporation, rendering hospital services in city's behalf without compensation or remuneration, except for necessary outlays in operation of hospital, was not unconstitutional as grant or loan of city's credit. South Side Dist. Hosp. v. Hartman (1944) 62 Ariz. 67. 153 P.2d 537. Municipal Corporations ¶722

School trustees may lease land for school sites, provided provision of this article prohibiting gifts or loans of public money or credit is not violated, and proper safeguards should be taken to protect title to school property placed on leased lands. Op. Atty. Gen. No. 57-58.

14. Highways

Neither county nor state may spend money upon what is, as a matter of law, merely a private right of way and not a public highway. Graham County v. Dowell (1937) 50 Ariz. 221. 71 P.2d 1019. Highways ¶99.5

Until a highway is established as a public highway in manner provided by law, legislature cannot appropriate state funds to be spent thereon, nor direct that highway be maintained from general appropriations for highway department. Graham County v. Dowell (1937) 50 Ariz. 221. 71 P.2d 1019. Highways ¶99.5

State highway department could not reimburse seller for payment of federal documentary stamp tax, 26 U.S.C.A. § 4361, on conveyances granting interest in realty to state for purpose of constructing highways. Op. Atty. Gen. No. 63-1.

Proposed statute which would reimburse utilities for relocation of their facilities in public right of way due to highway construction or reconstruction would violate provisions of this section, prohibiting governmental gifts or loans of credit to private persons. Op. Atty. Gen. No. 60-27.

15. Public employees--In general

Agreement between school district and teachers' association in which district released association's president from teaching duties but continued to pay portion of president's salary in return for president's performance of activities and duties enuring to benefit of district, including providing information and meeting with assistant superintendent for personnel, did not violate Const. Art. 9, § 7 prohibiting donation of public monies to private association; agreement served public purpose and there was neither donation nor subsidy to a private association. Wistuber v. Paradise Valley Unified School Dist. (1984) 141 Ariz. 346, 687 P.2d 354. Labor And Employment ¶1265

The Department of Agriculture can institute an employee recognition program, and expend a nominal amount of public funds on plaques, pen and pencil sets bearing the Department's logo, and other such mementos, without violating the Gift Clause. Op.Atty.Gen. No. 197-003.

Increase in teacher salaries during a school year is permissible only if contracted for prior to the time the services are rendered and in a sum certain only for the period covered by the teaching contract, provided that the current school district budget contemplates such an expenditure. Op.Atty.Gen. No. 184-034.

School board policy to pay a teacher a higher salary for his or her final year of teaching before retirement may be deemed part of the employment agreement for the final year of teaching, and, therefore, the extra payment is a part of the teacher's salary and part of the bargain for contractual obligation of the school board, not a gift subject to provision of this section prohibiting gifts by state or subdivision of the state. Op.Atty.Gen. No. 181-79.

If delivery of signed teacher's contracts without addenda which would have permitted future upward revision of the salaries contained in the contracts, was authorized by the teachers, the teachers then would have agreed to perform their teaching duties for the rates specified in the contracts, and, therefore, for the district to pay an additional amount to the teachers for the same services which the teachers were already legally obligated to perform for the district would constitute a gift in violation of this section. Op.Atty.Gen. No. 180-027.

If release time to teacher association representatives and payment of salary to such representatives while they are absent from the classroom are part of the consideration agreed upon in exchange for teachers promise to perform services for the district, there would be no violation of this section prohibiting a subdivision of the state from making any donation or grant to any individual, but, if the release time is not a benefit conferred in exchange for the teachers' agreement to perform teaching services, it would have to be determined whether this section had been violated. Op.Atty.Gen. No. 179-121.

A plan under which a school district employee would, upon retirement or termination, receive a lump sum bonus based upon his prior salary after the employee had served within the school district for period of five years would constitute an illegal gift of school money to the employee. Op.Atty.Gen. No. 71-16.

16. --- Adjustments, public employees

A teacher incorrectly placed on a salary step during the last fiscal year may be placed on the correct step for the new fiscal year; however, the district may not award "back pay" to that teacher, since the previous year's contract was accepted and completed; any adjustment after services had been rendered pursuant to a contract would violate constitutional prohibition against a gift or loan of credit. Op.Atty.Gen. No. 187-103.

17. --- Per diem, public employees

Assistant director of finance lacked authority to issue a directive which would entitle all state employees to receive \$40.00 per day irrespective of actual travel expenses. Op.Atty.Gen. No. 179-295.

18 ---- Expenses, public employees

An eligible officer, deputy, or employee when traveling on state business may claim only those expenses actually incurred for meals, lodging, and incidental travel expenses; any amount paid in excess of that would be a gift or donation prohibited by this section, and, in addition, any excess amount received would be compensation or emolument paid the officer, deputy, or employee in excess of that authorized by the legislature and prohibited by §§ 38-464 and 38-601. Op.Atty.Gen. No. R75-33, p. 90, 1975-76.

Service charge added to bill for meals or lodging would constitute an actual and necessary subsistence expense, and, if public officer or employee felt compelled by custom and local practice to tip and did so at restaurant while traveling on public business and in an amount which was usual and customary, tip would not constitute a gift, which is a free bestowing of a gratuity without consideration, but would constitute a reimbursable expense under A.R.S. § 38-624 and would not constitute a gift, donation, or grant to an individual within provision of this section prohibiting state or subdivisions thereof from making any donation or grant. Op.Atty.Gen. No. 69-22-L.

Legislature, in its discretion, could validly appropriate funds to provide household moving expenses for key personnel. Op.Atty.Gen. No. 62-96-L.

19 ---- Leave time, public employees

Tucson Unified School District's grant of paid time off to teachers for teacher association activities was not violative of the this section's prohibition against the "gift" of public monies by the state or its subdivisions. Op.Atty.Gen. No. 187-082.

County board of supervisors had discretion to establish, for county personnel, a sick pay plan and a special fund from which to make payments to such personnel on account of sickness. Op.Atty.Gen. No. 181-020.

Teacher could receive remuneration predicated upon teacher's continuously rendering, during an extended sick leave period, one of the four types of services outlined in a school district proposed leave policy. Op.Atty.Gen. No. 78-158.

A school district's policy of granting five days of conditional sick leave to new employees serves a valid public purpose and, therefore, may not be considered violative of the proscription of this section against gifts of public money. Op.Atty.Gen. No. 78-60.

Leave time to be allowed school district employees is matter of fringe benefits and salary, and school district governing board has wide discretion in the matter and may contract with its employees as it sees fit provided leave does not result in double pay or gift of school monies, and, in regard to leave to attend educational association conferences, provided board retains right to refuse permission to attend a particular activity and permitted activity promotes legitimate educational objectives. Op.Atty.Gen. No. 73-21.

School district governing board may offer its employees compensation for unused sick leave where governing board determines that it is to its benefit to do so. Op.Atty.Gen. No. 73-21.

State welfare department's personnel procedure rule granting retiring employee specified leave with pay (in addition to accumulated leave) was a gratuitous payment and therefore invalid. Op.Atty.Gen. No. 71-12-L.

20 ---- Memberships in organizations, public employees

In the event the state hospital board adopts a resolution authorizing individual membership in the Arizona state purchasing agents association, such memberships may be paid for from state funds, notwithstanding fact they are individual memberships, provided board concurs with business manager that such memberships are for a public purpose. Op.Atty.Gen. No. 56-76.

21. --- Tuition, public employees

Where state university provided a part-time professor to instruct school districts' teachers in a course needed to upgrade the school districts' special education programs in order for district to qualify for additional special education funds, and school district agreed to pay university tuition for each of the teachers enrolled in the course, tuition expenditure was made for a public purpose and, therefore, did not violate provision of this section prohibiting gifts of public monies, even though individual teachers incidentally benefited by obtaining college credits. Op.Atty.Gen. No. 180-219.

Payment of necessary fees or costs for state department employees attending driver improvement course in connection with participation by state in National Safety Council's driver improvement program by participating state department would require finding a valid public purpose and existence of a valid appropriation to cover such expenses. Op.Atty.Gen. No. 66-13.

State department head could direct his employees to register in, and attend, a driver improvement course in connection with state participation in National Safety Council's driver improvement program, subject to statutory limitations governing the particular participating department. Op.Atty.Gen. No. 66-13.

Driver improvement course for state employees directed by state department head to register in, and attend, such course could be conducted on state time during normal working day to extent that attendance by employee was determined to constitute part of his official duties. Op.Atty.Gen. No. 66-13.

State department of public welfare could authorize its employees to attend an accredited educational institution to acquire professional and technical knowledge and develop skills pertaining to the department and could retain such employees in positions held at applicable salaries with rights and benefits provided under state law while the employees were on detached service. Op.Atty.Gen. No. 57-84.

22. --- Motor vehicles, public employees

This section prohibiting the state or subdivision of the state from making donations or grants would not be violated if school district determined that its best interest was served by offering the school superintendent a compensation package which would include the use of a motor vehicle as a fringe benefit in exchange for the superintendent's services to the district. Op.Atty.Gen. No. 180-137.

If school district wishes to provide school superintendent with a motor vehicle for personal use as part of a compensation package for superintendent's services to the district, an alternative to providing a district-owned or leased motor vehicle would be to have the district contract with the superintendent to pay a vehicle allowance in the amount of the lease payments. Op.Atty.Gen. No. 180-137.

23. ---- Garnishment, public employees

Laws 1929, Ch. 50, authorizing garnishment of wages of state officers and employees, was not unconstitutional as authorizing donation to individual, not for public purpose. State v. Roseberry (1930) 37 Ariz. 78, 289 P. 515, States

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24. Acts or omissions insurance, public employees

It does not violate state constitutional "gift clause" and is not against public policy for state to provide a fund of insurance to compensate persons injured by acts or omissions of government agents while acting in authorized governmental or proprietary capacities. State v. Heinze (App. Div. I 1999) 196 Ariz. 126, 993 P.2d 1090, as amended, review denied. States 119

25. Burden of proof

As party claiming that gift clause of State Constitution was violated by legislation permitting any taxpayer who owned property used for agricultural purposes, but who failed to file timely annual certification and received nonagricultural valuation as result, to file omitted certification and obtain tax refund of difference in ad valorem taxes, county had burden of demonstrating that exchange of tax money for public benefit was disproportionate, which burden it could not satisfy by merely asserting, without any support, that public would lose nothing if a taxpayer were forced to sell farm to someone who continued farming and that all intervening taxpayers had paid taxes and were in no threat of losing farms. Maricopa County v. State (App. Div. I 1996) 187 Ariz. 275, 928 P.2d 699, review denied. States 119

Burden of proof was on taxpayers challenging contract between school district and teachers' association to show that consideration paid to association president by district was disproportionate to the duties she performed for district. Wistuber v. Paradise Valley Unified School Dist. (1984) 141 Ariz. 346, 687 P.2d 354. Schools 111

26. Fact questions

Question whether Const. Art. 9, § 7 bans a particular donation of hospital district properties to a private entity is one of fact depending on the circumstances surrounding the consideration for the donation. Op. Atty. Gen. No. 184-159.

27. School districts

School districts and charter schools may use the appropriations of Laws 2006, Ch. 353 to fund any increase in salary and benefits for nonadministrative personnel over fiscal year 2005-2006 levels, but the funding may not be used for any other purpose. Op. Atty. Gen. No. 107-003.

School districts and charter schools should use fiscal year 2005-2006 salary and benefit levels to determine increases resulting from the Legislature's Laws 2006, Ch. 353 appropriation. Op. Atty. Gen. No. 107-003.

Previously executed contracts for the 2006-2007 school year of nonadministrative employees of school districts and charter schools may be amended to add compensation increases as a result of appropriation provision, without violating either article IX, § 7 or article IV, part 2, § 17 of the Arizona Constitution. Op. Atty. Gen. No. 106-003 (Sep. 6, 2006), 2006 WL 2702207.

School district governing boards lack authority to make cash or savings bond awards to individual students who achieve perfect attendance; however, governing boards may promote academic achievement by cash awards, provided the consideration given does not violate constitutional prohibitions against improper gifts of public property. Op. Atty. Gen. No. 190-072.

School district lacked authority to make substantial gifts of cash to individual students for perfect attendance, but

could expend funds to afford additional educational opportunities to classes in recognition of attendance records. Op. Atty. Gen. No. 187-123.

28. Water rights

Statute ordering courts to make the public trust doctrine inapplicable in water rights adjudications violated separation of powers and violated constitutional limit on legislative power to give away resources held in trust by state. San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa (1999) 193 Ariz. 195, 972 P.2d 179. Constitutional Law ↪ 2352; Public Lands ↪ 142.5; Waters And Water Courses ↪ 128

Statute providing that permit for right to use water on state land must be issued in state's name except in any one of three specified circumstances was not unconstitutional giveaway of state property rights, as statute merely regulated form and use of certificates, without changing substantive law. San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa (1999) 193 Ariz. 195, 972 P.2d 179. Waters And Water Courses ↪ 4

A. R. S. Const Art. 9 § 7, AZ CONST Art. 9 § 7

Current through the end of the Forty-Eighth Legislature, Second Regular Session (2008), and also includes election results from the November 4, 2008 general election

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END OF DOCUMENT

SECTION F

CABLE TELEVISION LICENSE AGREEMENT

THIS CABLE TELEVISION LICENSE AGREEMENT (the "Agreement") is made and entered into this 5th day of June, 2007, by and between the City of Scottsdale, an Arizona municipal corporation ("Licensor"), and CoxCom, Inc., a Delaware corporation ("Licensee").

RECITALS

A. Licensor owns public street and alley rights-of-way and public utility easements within the boundaries of the City of Scottsdale (the "Boundaries") that are dedicated and set apart for use by public utility companies for installation, operation and repair of water, electrical and other public utilities pursuant to franchises, licenses or other agreements between utility companies and Licensor (collectively, the "Property").

B. Various laws (the "Cable Laws") authorize Licensor to regulate its streets, alleys and public utility easements, and to grant, renew, deny, amend and terminate licenses for the installation, operation and maintenance of cable television systems and otherwise regulate cable television systems within the Boundaries. The Cable Laws include, without limitation, the following:

- (1) Chapter 7 of the Scottsdale Revised Code entitled "Cable Television" (the "Cable Code").
- (2) Other applicable provisions of the Scottsdale Revised Code.
- (3) The Scottsdale City Charter.
- (4) A.R.S. §§ 9-505 through 9-510 and other state and federal statutes.
- (5) The Constitution of the State of Arizona.
- (6) Other applicable federal, state and local laws, rules and regulations.
- (7) Licensor's police powers, its authority over its public rights-of-way, and its other governmental powers and authority.

C. Since November 1996, Licensee (or its predecessor in interest) has maintained and operated a cable television system (the "Cable System") in the Right-of-way pursuant to City Ordinance No. 1461 dated April 6, 1982 (area south of Deer Valley Road) and Ordinance No. 1911 on August 18, 1986 (service area north of Deer Valley Road) (collectively, the "Original Agreement").

D. Licensor desires to grant to Licensee a license to continue to use the Right-of-way for the Cable System (the "Permitted Uses") subject to the requirements of this Agreement.

E. This Agreement is subject to the Cable Laws.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept

and performed by Licensee, and other good and valuable consideration, Licensors and Licensee agree as follows:

I. RIGHT-OF-WAY

1. Right-of-way. Licensors hereby grants to Licensee a license to use a portion of the Property the "Right-of-way") as follows:

1.1 Right-of-way. The Right-of-way are limited to such portions of the Property as are public street and alley rights-of-way and public utility easements that are owned by Licensors from time to time within the Boundaries comprising Licensors's public utility easement network. The land comprising the Right-of-way will decrease, increase, and otherwise change over time due to abandonments, new dedications, annexations, de-annexations, and other events that affect the amount of land included in Licensors's public utility right-of-way network inventory.

1.2 Condition of Title. Licensee's rights hereunder are subject to all recorded or unrecorded matters or conditions of title to or agreements or documents regarding the Right-of-way. Licensee's rights to use the Right-of-way under this Agreement are limited to a subset of the interests held by Licensors from time to time. Licensee shall not violate the documents by which Licensors holds its interests in the Right-of-way.

1.3 Condition of Right-of-way. The Right-of-way are being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use.

1.4 No Real Property Interest. Notwithstanding any provision hereof to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights herein are limited to use and occupation of the Right-of-way for the provision of cable service. Licensee's rights in the Right-of-way are limited to the specific limited license rights created by this Agreement.

1.5 Limited Rights in Right-of-way. This Agreement grants Licensee no rights to or further use of the Right-of-way other than those expressly granted herein. Licensee accepts the risk that Licensors may use the Right-of-way in a manner inconsistent with Licensee's use. In that event, Licensee's use shall be subordinated and Licensee shall not be entitled to compensation from Licensors.

1.6 Use Priority. This Agreement does not establish any priority for Licensee to use the Right-of-way over any other present or future users of the Right-of-way. Licensee's use of the Right-of-way shall be subordinate to any prior or subsequent lawful occupancy or use thereof by Licensors or any other governmental entity. The priority of use of the Right-of-way shall first be to Licensors (including uses Licensors may extend to the public generally), the second priority to the State of Arizona and its political subdivisions in the performance of their various functions, and, thereafter, as between recipients of license agreements and other permit holders, as determined by Licensors in the exercise of its powers, including the police power and other powers reserved to and conferred on Licensors by the State of Arizona and the people of the City of Scottsdale.

1.7 Permitted Uses. Licensee shall use the Right-of-way solely for the Permitted Uses and shall conduct no other activity at or from the Right-of-way. The Permitted Uses are limited to:

1.7.1 Providing Cable Service within the Boundaries. Licensee may also provide broadband internet access and telecommunications services over the cable system to the extent permitted by Federal and state law.

1.7.2 To the extent permitted by Federal or state law, such additional related uses to which Licensor may give or retract consent from time to time. Such additional uses may only be conducted following Licensor's giving to Licensee notice of such consent. Licensor may terminate or impose conditions and limitations on such consent from time-to-time in Licensor's sole and absolute discretion.

1.8 Permitted Facilities. The portion of the Cable System that is allowed to be located upon the Right-of-way is the video distribution network that carries Cable Service from Licensee to customers, subject to the following:

1.8.1 The following items are specifically allowed:

1.8.1.1 Horizontal signal conductors (including vertical runs up and down poles, buildings, and the like).

1.8.1.2 Splitters, amplifiers and similar devices for distribution of Cable Service.

1.8.2 The following items are specifically prohibited:

1.8.2.1 Business offices, repair facilities and storage areas.

1.8.2.2 Switching stations and other equipment that does not need to be located in the Right-of-way in order for the Cable System to operate properly.

1.8.2.3 Antennas, radio transmitters and supporting equipment, except for portable equipment used by Licensee's service crews to communicate with Licensee.

II. TERM OF AGREEMENT

2. Term of Agreement. Licensor hereby grants to Licensee a license to use the Right-of-way subject to and conditioned upon Licensee's full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Licensee, and Licensee hereby accepts the Right-of-way and this Agreement.

2.1 Original Agreement Superseded. The Original Agreement is extended to 11:59 p.m. June 30, 2007. This Agreement becomes effective and completely terminates and supersedes the Original Agreement as of that exact time and date.

2.2 Original Term Expiration. The original term of this Agreement shall terminate 11:59 p.m. June 30, 2018, unless sooner terminated as set forth in this Agreement.

2.3 Holding Over. In any circumstance whereby Licensee would remain in occupancy of the Right-of-way after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a use right from month to month that may be terminated at any time by Licensor upon sixty (60) days notice to Licensee, or by Licensee upon sixty (60) days notice to Licensor.

2.4 Agreement Accepted. By accepting this Agreement, Licensee acknowledges having carefully read the terms and conditions of the Cable Code and this Agreement and having accepted the obligations imposed thereby. Licensee further acknowledges and certifies that none of the obligations imposed on Licensee by this Agreement or the Cable Code is individually or cumulatively commercially impracticable.

III. LICENSEE'S PAYMENTS

3. Licensee's Payments. Licensee shall make payments to Licensor as follows:

3.1 Fee Payment Items. Licensee shall pay to City each of the following separate and cumulative amounts (collectively the "Fee Payment"):

3.1.1 An amount (the "License Fee Payment") comprising a certain percentage of certain Licensee revenues (the "Gross Revenue").

3.1.2 An amount (the "Permit Fee Payment") based on Licensee's permit review and other costs as set out below.

3.1.3 An amount (the "Violation Fee Payment") based on certain breaches by Licensee of this Agreement as set out below.

3.1.4 All other amounts required by this Agreement.

3.2 License Fee Payment. The License Fee Payment shall be calculated as a percentage of all revenues and other proceeds (collectively the "Gross Revenue") from Licensee's use of the Right-of-way as follows:

3.2.1 Applicable Percentage. The percentage used to calculate Percentage Use Fee shall be as follows:

3.2.1.1 Commencing on the date of this Agreement through June 30, 2009, the percentage shall be five and sixty hundredths percent (5.60%).

3.2.1.2 Commencing on July 1, 2009 through June 30, 2010, the percentage shall be five and thirty hundredths percent (5.30%).

3.2.1.3 During the remainder of the term of this Agreement, the percentage shall be five percent (5.00%).

3.2.2 Gross Revenue Inclusions. Gross Revenue means all cash, credits, property of any kind or nature, and other consideration, less related bad debts up to a maximum of one and one-half percent (1 ½%) annually of such consideration, received directly or indirectly by Licensee, its affiliates, subsidiaries, parent and any person, firm or corporation in which Licensee has a financial interest or which has a financial interest in Licensee, that are derived from Licensee's operation of the Cable System to provide cable service within the Boundaries. Gross Revenue includes, but is not limited to, all revenue from:

3.2.2.1 Charges for cable service provided to a customer.

3.2.2.2 Charges for the installation, removal, connection and reinstatement of equipment necessary for a customer to receive cable service.

3.2.2.3 Any other income derived from the Cable System including without limitation forfeited deposits recovered, sale or rental by Licensee to customers of equipment for the provision of Cable Service, late charges, interest income, and sale of program guides.

3.2.2.4 All other cable service related charges to customers and receipts from customers.

3.2.3 Gross Revenue Exclusions. Gross Revenue shall not include revenue from:

3.2.3.1 Charges to advertisers for the insertion by Licensee of commercial advertising upon the Cable System.

3.2.3.2 Charges for the use or lease of Licensee's studio facilities.

3.2.3.3 Charges for the use of leased access channels or bandwidth.

3.2.3.4 Charges for the production for transmission over the Cable System of video programming by Licensee, including programming produced by its mobile facilities.

3.2.3.5 The proceeds of any sale, exchange, use or cablecast of programming produced by Licensee.

3.2.3.6 Revenues received from programmers of home shopping services for sales to Licensee's customers.

3.2.3.7 Launch fees or marketing expense reimbursements paid by video content programmers.

3.2.3.8 License fees, taxes, or other fees or charges that Licensee collects and pays to any governmental authority.

3.2.3.9 Increase in the value of any stock, security or asset; or any dividends or other distributions made in respect of any stock or securities.

3.2.4 Bundled Service. If Licensee offers its customers a price discount if they obtain a bundle of cable service and other goods and services, then the discount shall be allocated among the cable service and other goods and services for purposes of computing Gross Revenue as follows:

3.2.4.1 Licensee shall not bundle cable service with non-cable services in a manner that the amount of Gross Revenue attributed to cable service will unreasonably or significantly reduce the Use Fees payable under this Agreement.

3.2.4.2 If Licensee's marketing materials for the bundle do allocate the price of cable service included in the bundle, then the amount of the discount on a bundle of

services shall be allocated based on the price that Licensee allocates to cable service in its marketing materials for the bundle. The following examples illustrate how the discount would be allocated:

3.2.4.2.1 If Licensor's marketing materials for a bundle state that the customer will receive "free cable television service with purchase of internet access" then, the amount of the bundle price allocated to cable service for that customer shall be Zero and No/100 Dollars (\$0.00).

3.2.4.2.2 If Licensor's marketing materials for a bundle state that the customer will receive "half price cable television service with purchase of internet access" then, the amount of the bundle price allocated to cable service for the customer shall be half of Licensor's standard, non-discounted, non-bundled rate for cable television service.

3.2.4.2.3 If Licensor's marketing materials for a bundle state that the customer will receive "free HBO upgrade with purchase of cable television service" then, the amount of the bundle price allocated to cable service for the customer shall be Licensor's full standard, non-discounted, non-bundled rate for cable television service.

3.2.4.3 If Licensee's marketing materials for the bundle do not allocate the price of cable service included in the bundle, then the discount shall be allocated based on Licensor's standard, non-discounted, non-bundled rate for the services in the bundle. The following examples illustrate how the discount would be allocated:

3.2.4.3.1 Assume a customer's charges for a given month for cable services alone would be \$40.00, for local telephone service alone \$30.00, and for cable modem service alone \$30.00, for a total of \$100. If Licensee offers the three services at a combined rate of \$80 (i.e., the customer in effect receives a twenty percent (20%) discount from the regular retail rates that would apply to the services if purchased separately), then the Gross Revenue from cable service would be deemed to be \$32 (\$40, less 20% of \$40).

3.2.4.3.2 Assume the same facts as the preceding example, except that the Customer also purchases an upgrade to cable service (such as HBO) at a fixed fee of \$15 a month that is not included in the bundled service offering the discount (i.e. the discount does not apply to this service), for a total of \$95 (\$80 bundle offer, plus \$15). Gross Revenue would be \$47 (\$32 from the prior example of bundled services, plus the undiscounted \$15).

3.2.4.4 Nothing herein shall be construed to require Licensee to offer any service at a price in conflict with a price for that service mandated by law or regulation.

3.2.4.5 If a Licensee offers a good or service, such as a customer wiring repair service, which pertains to both cable service and non-cable service, then the price of such good or service shall be allocated pro-rata between the cable service and non-cable services in question based on the number of services involved.

3.3 Revenue Laws. If the Cable Laws are amended to allow Fee Payment to include internet, dial tone or other services on the Cable System, the Fee Payment shall thereafter include the charges allowed by the Cable Laws.

3.4 Permit Fee Payment Amount. The amount of the Permit Fee Payment shall be the total amount of all applicable ordinary fees (the "Ordinary Permit Charges") payable to Licensor

for Licensor's review of plans, issuance of permits, and inspection of Licensee's work upon the Right-of-way. The maximum amount of the Permit Fee Payment that Licensee shall pay for any calendar year is Forty-Five Thousand and No/100 Dollars (\$45,000.00).

3.5 Violation Fee Payment Amount. The amount of the Violation Fee Payment shall be the sum of various amounts (the "Violation Amounts") as hereafter described.

3.6 Fee Payment Cumulative. All items of Fee Payment shall be cumulative and separate from each other.

3.7 Fee Payment Schedule. Licensee shall pay all Fee Payment for each year on the following schedule:

3.7.1 Licensee shall pay Permit Fee Payment each year at the same times and in the same amounts that Licensor would impose Ordinary Permit Charges, until Licensee has paid all Permit Fee Payment for that year.

3.7.2 All other Fee Payment shall be payable quarterly in arrears on the last day of the first month of the next calendar quarter. For example, the License Fee Payment for the first calendar quarter of a year shall be payable on or before April 30.

3.8 Fee Payment Amount Report. Each installment of Fee Payment shall include a report showing the manner in which each component of Fee Payment was calculated. The report shall summarize the transactions giving rise to the License Fee Payment. When requested by Licensor from time to time, the reconciliation shall be accompanied by documentation substantiating Gross Revenue and other amounts.

3.9 Letter of Credit. Within ten (10) days after the date of this Agreement, Licensee shall deliver to Licensor, a letter of credit from a financial institution approved by Licensor in the amount of Five Hundred Thousand Dollars (\$500,000.00). The form and content of such letter of credit shall comply with all requirements of Exhibit "A" and the remainder of this Agreement and shall be approved by the city attorney. The letter of credit shall stand as a security deposit guaranteeing Licensee's faithful performance of this Agreement. Any portion of any security to which Licensee may then be entitled, net of any setoff or other obligation of Licensee, shall be paid to Licensee without interest by Licensor within sixty (60) days after the later of termination of this Agreement or completion of all of Licensee's obligations related to this Agreement.

3.10 Late Fees. Fee Payment is deemed paid only when Licensor actually receives good cash payment. Should any Fee Payment not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100). Furthermore, any Fee Payment that is not timely paid shall accrue simple interest at the rate of one and one-half percent (1 ½ %) per month from the date the amount first came due until paid. Licensee expressly agrees that the foregoing represent fair and reasonable estimates by Licensor and Licensee of Licensor's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment of Fee Payment. Licensor shall have the right to allocate payments received from Licensee among Licensee's obligations.

3.11 Fee Payment Amounts Cumulative. All amounts payable by Licensee hereunder or under any tax, assessment or other existing or future ordinance, law or other contract or obligations to the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each

other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

IV. CUSTOMER AND COMMUNITY SERVICE REQUIREMENTS

4. Customer and Community Service Requirements. Licensee shall provide customer and community service as follows:

4.1 Customer Service Standards. Licensee shall provide customer service as follows:

4.1.1 Most Favored. Licensee shall provide customer service levels and standards of service to the customers it serves under this Agreement consistent with the highest levels and standards of service that Licensee provides to customers within the State of Arizona.

4.1.2 Rejection of Service. Licensee shall not arbitrarily refuse Cable Service to anyone. However, Licensee is not required to provide Cable Service to any Customer who does not pay applicable Cable Service charges.

4.1.3 Telephone Support. Licensee shall provide sales, billing, repair, installation, technical and other customer support by local telephone number as follows:

4.1.3.1 Trained Licensee representatives will be available to respond to customer telephone inquiries during normal business hours.

4.1.3.2 After normal business hours, Licensee's customer service telephone line may be answered by a service or an automated response system, including an answering machine. A Licensee representative must respond to inquiries received after normal business hours on the next business day.

4.1.3.3 Under normal operating conditions, Licensor shall meet the following:

4.1.3.3.1 Ninety percent (90%) of all calls during any ninety (90) day period will be directed to an automated customer service call menu within an average of thirty (30) seconds.

4.1.3.3.2 Eighty percent (80%) of callers who choose to talk to a customer service representative during a ninety (90) day period will be connected to a person within thirty (30) seconds.

4.1.3.4 Customers will receive a busy signal less than three (3%) percent of the time.

4.1.3.5 Licensee will not be required to acquire equipment or perform surveys to measure compliance with the telephone support standards above unless a historical record of compliance indicates a clear failure to comply.

4.1.4 Local Business Office. The Licensee shall maintain a business office within the Boundaries for customers to make payments and/or address billing- or service-related issues. The office shall be conveniently located and shall be open during normal business hours Monday through Friday, and shall include evening and weekend hours to meet customers' needs.

4.1.5 Field Services. Licensee shall provide installations, repairs and other field service as follows:

4.1.5.1 Under normal operating conditions, Licensee shall meet each of the following four (4) standards no less than ninety five (95%) percent of the time, measured during any ninety (90) day period:

4.1.5.1.1 Standard installations will be performed within seven (7) business days after an order has been placed, unless the Customer requests a later installation.

4.1.5.1.2 Excluding conditions beyond Licensee's control, Licensee will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Licensee must begin actions to correct other service problems the next business day after notification of the service problem.

4.1.5.1.3 The "appointment window" for installations, service calls, and other installation activities will be either a specific time, or at maximum, a four (4)-hour time block during normal business hours. (Licensee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

4.1.5.1.4 Licensee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

4.1.6 Late Appointments. If a Licensee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, Licensee shall contact the customer. If necessary, Licensee shall reschedule the appointment at a time convenient for the customer.

4.1.7 Outages. Licensee shall respond to confirmed outages immediately. Licensee shall not exceed a four-hour average response time to outages during any consecutive three-months, under normal operating conditions.

4.1.8 Interruption. Licensee shall render efficient cable services, make repairs promptly, and interrupt cable services only for good cause and for the shortest time possible. Interruptions, insofar as possible, shall occur during periods of minimum cable system use.

4.2 Billing. Licensee's billing activities shall comply with the following:

4.2.1 Licensee shall provide the following written information to all customers at the time of installation of service, at least annually, and at any other time upon request:

4.2.1.1 Prices and options for programming services and conditions of subscription to programming and other services.

4.2.1.2 Installation, service and maintenance policies.

4.2.1.3 Billing and complaint procedures, including the address and telephone number of Licensor's cable office.

4.2.2 Licensee shall notify customers in advance of any changes in rates, programming services or channel positions. Licensee shall give notice to customers a minimum of thirty (30) days in advance of such changes if the changes are then known to Licensee or are within Licensee's control. In addition, Licensee shall notify Customers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

4.2.3 Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. Bills shall list a Licensor phone number provided by Licensor for customers to register customer service complaints with Licensor. Until Licensor provides another phone number, the phone number shall be (480) 312-2230.

4.2.4 Licensee shall respond to a written complaint from a Customer within thirty (30) days.

4.2.5 Licensee shall issue refund checks promptly, but no later than the earlier of:

4.2.5.1 Customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier.

4.2.5.2 The return of the equipment supplied by Licensee if service is terminated.

4.2.6 Credits for service will be issued no later than the Customer's next billing cycle following the determination that a credit is warranted.

4.2.7 Any Customer shall be entitled, upon request, oral or written, to Licensee to a refund equal to one day's service for each Customer's loss of service caused by Licensee: (1) for a continuous twenty-four (24) hour period or (2) for a period of two (2) or more hours on each of any four (4) days within a monthly billing period.

4.2.8 All personnel, agents and representatives of the Licensee, including subcontractors, shall wear Licensee uniform or clearly display a Licensee photo-identification badge when acting on behalf of Licensee.

4.2.9 Licensee shall afford each customer of the cable system right of rescission for ordering cable service. Such right of rescission shall end upon the earlier of three (3) days after the order or initiation of physical installation of Licensor's cable system equipment on the customer's premises.

4.2.10 Licensee shall bill all customers in a uniform manner, regardless of the customer's level of service. In no case shall any customer be billed for services in excess of thirty (30) days prior to receipt of such service. Payment shall be due no sooner than the fifteenth (15th) day of each billing period, and the due date shall be listed on each bill. Bills shall be mailed no later than the first day of the billing period.

4.3 Suspending Service. Licensee shall only disconnect or terminate a customer's service for good and just cause. In no event shall Licensee disconnect said Cable Service for nonpayment without first notifying the affected customer at least seven (7) days prior to such

disconnection or termination. In no event shall such disconnection or termination for nonpayment occur in less than 30 days after a customer's failure to pay a bill due. Where Licensee has improperly discontinued Cable System service to any Customer, Licensee shall provide free reconnection to the Cable System to such customer.

4.4 Complaints through Licensors. Licensee shall act upon complaints made through Licensors within three (3) days after Licensee is informed of the complaint.

4.5 Community Service. When requested by Licensors, Licensee shall provide Cable Service to Licensors' facilities at no charge ("Community Service") as follows:

4.5.1 Community Service includes at no charge a drop of up to two hundred (200) feet measured from the nearest active cable tap and one outlet and expanded basic service tier (Channels 1-99) and all public safety programming at no monthly service charge. Licensors may increase the distance limit in the preceding sentence by offering to pay the incremental cost of the additional distance.

4.5.2 Licensors may install at its own expense as many additional outlets as it deems appropriate beyond the one outlet provided at Licensee's expense at each location with no monthly service charge for such additional outlets. Licensee shall provide a reasonable signal level based on Licensors' design for additional outlets at each such location.

4.5.3 Licensee shall provide Community Service to structures occupied by Licensors (whether owned or leased). However, if Licensors only has a single suite or area in a larger commercial building, such as shopping mall, then Lessee need only provide Community Services to the suite or area.

4.5.4 Licensors shall be responsible for the installation and maintenance of all interior distribution facilities for Community Service.

4.5.5 Licensors' cable television administrator or information systems department shall function as Licensee's point of contact with Licensors' departments requesting Community Service.

4.5.6 Licensee shall continue to provide and maintain a cable connection to Licensee's master headend from the Government Access Facility (City Cable 11) located at 7384 E. 2nd Street, Scottsdale, Arizona 85251.

4.6 Advertising. During each of the years in the term of this Agreement, Licensee shall provide Licensors seventy (70) 30-second run of station Licensors-produced ad spots, which shall be placed on Licensee's Cable System at locations and at dates and times of Licensee's choosing. Such ads shall run between the hours of 6:00 a.m. and midnight and may only be utilized for public service non-political topics selected by Licensors including, but not limited to, youth-related issues, education, drowning prevention, smoke awareness and promotion of Scottsdale Channel 11. The value of such advertising shall not be offset against Fee Payment.

4.7 Government and Education Channels. Licensee shall continue to provide to Licensors at no cost two channels in the Basic Programming Tier (channels 1-99) for use to transmit programming that is provided by Licensors or school districts selected by Licensors within the Boundaries.

4.8 Public Safety Channels. Licensee shall also provide at its expense the means for Licensor to transmit programming on two "virtual" Public Safety Channels in a secure manner, meaning that (a) either the programming is not transmitted to or available at locations other than those designated by Scottsdale, or (b) if the programming is available at other locations, neither the video nor audio portions can be received in usable or understandable form by an ordinary customers (for example, both the video and audio portions are encrypted). Licensor may use such channels for such purposes as secure broadcasts to municipal buildings and transmitting training videos or live training sessions to several fire, police or paramedic stations simultaneously. Licensee shall provide at all locations receiving Community Service, the facilities and equipment necessary to receive and unscramble the Public Safety Channel programming at the locations designated by Licensor at no cost to Licensor.

V. IMPROVEMENTS BY LICENSOR

5. Improvements by Licensor. Licensor has not promised to and is not obligated in any manner to make any improvements or perform any other construction or other work at the Right-of-way.

VI. LICENSEE'S IMPROVEMENTS GENERALLY

6. Licensee's Improvements Generally. All of Licensee's improvements and other construction work whether or not specifically described herein upon the Right-of-way (collectively "Licensee's Improvements") shall comply with the following:

6.1 Permits and Inspections. Prior to performing work upon the Right-of-way, Licensee shall submit all work plans to Licensor for review by Licensor's staff in designated departments responsible for such review and shall obtain all permits and other approvals related thereto. During the course of the work, Licensee shall observe inspection, safety and other rules.

6.2 Licensee's Improvements. Licensee's Improvements include, without limitation all modification, replacement, repairs, installation, construction, excavation, or other alterations or parking or other cumulatively significant construction or similar work of any description and all installation or alteration of the Cable System.

6.3 Zoning and Similar Approval Process. The zoning processes, building permit processes, and similar regulatory requirements that apply to Licensee's Improvements are completely separate from the plans approval processes under this Agreement. Licensee's satisfaction of any requirement of this Agreement does not count toward any compliance with any regulatory requirement. Licensee's satisfaction of any regulatory equipment does not count toward compliance with any requirement of this Agreement. Licensee must make all submittals and communications regarding the requirements of this Agreement through Licensor's contract administrator for this Agreement and not through planning, zoning, building safety, or other staff.

6.4 Relationship of Plans Approval to Regulatory Processes. Licensee's submission of plans under this Agreement, Licensor's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. BUILDING PERMITS, ZONING CLEARANCES, OR ANY OTHER GOVERNMENTAL REVIEWS

OR ACTIONS DO NOT CONSTITUTE APPROVAL OF ANY PLANS FOR PURPOSES OF THIS AGREEMENT.

6.5 MAG Standards. All work by Licensee under this Agreement shall conform to the standards of the Maricopa Association of Governments and of the City of Scottsdale Design Standards and Practices Manual, as either may be amended from time to time.

6.6 Cost of Licensee Improvements. All Licensee's Improvements shall be designed and constructed by Licensee at Licensee's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall Licensor be obligated to compensate Licensee in any manner for any of Licensee's Improvements or other work provided by Licensee during or related to this Agreement. Licensee shall timely pay for all labor, materials, work, and all professional and other services related thereto and shall pay, protect, indemnify, defend and hold harmless Licensor and Licensor's employees, officer's, contractors and agents against all claims related thereto. Licensee shall bear the cost of all work required from time to time to cause the Right-of-way and other nearby property owned by Licensor to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws if such work is required because of work performed by Licensee, by Licensee's use of the Right-of-way, or by any exercise of the rights granted to Licensee under this Agreement.

6.7 Improvement Quality. Any and all work performed on the Right-of-way by Licensee shall be performed in a workman-like manner as reasonably determined by Licensor and shall be diligently pursued to completion and in conformance with all building codes and similar rules.

6.8 Damage During Removal. Upon removal at any time of any item installed in or attached to the Right-of-way, Licensee shall simultaneously restore the Right-of-way to its prior condition, or to a condition matching Licensor's surrounding improvements, as directed by Licensor and repair any holes, mounting surfaces or other damage whatsoever to the Right-of-way. Such work shall include revegetation and appropriate irrigation systems for revegetated areas. Licensee shall not remove any item at any time without first submitting to Licensor at least fourteen (14) days in advance a notice describing the item to be removed. Said notice shall describe the work to be done to restore the Right-of-way and be accompanied by a cash bond in an amount determined by Licensor to completely protect Licensor and the Right-of-way from any failure by Licensee to fully and timely perform its obligations under this Agreement relating to said items or their removal.

6.9 Use of Poles. If Licensee extends new service into an area that already has available overhead utility poles, then Licensee may use such poles, subject to agreement with the pole owner. No underground facilities may be moved to poles. Licensee may not install any poles. Existing facilities on poles may remain on poles.

6.10 Approved Equipment. Licensee shall not install above ground equipment ("Visible Equipment") upon the Right-of-way unless Licensor has first approved the Visible Equipment as follows:

6.10.1 This paragraph does not apply to Cable System equipment already installed in the Right-of-way as of the date of this Agreement or to additional installations of the same equipment in the Right-of-way in the future. It only applies to new models and types of equipment not being installed in the R-O-W as of the date of this Agreement.

6.10.2 All Visible Equipment that Licensee installs upon the use Area from time to time must be of a color included in a palette of colors designated by Licensor from time to time. Licensor shall give Licensee ninety (90) days notice of any change in the approved palette.

6.10.3 Licensee may give Licensor notice proposing additional Visible Equipment for Licensor to approve. Any such notice shall include textual and graphical specification (such as catalog pages) of the Visible Equipment Licensee proposes. Licensor shall respond within thirty (30) days of any such notice. Licensor shall give Licensee ninety (90) days notice before removing any approved Visible Equipment from the list of approved Visible Equipment.

6.10.4 No visible Equipment shall be deemed approved by Licensor until Licensor stamps the information "APPROVED ONLY FOR PURPOSES OF PARAGRAPH 6.10 OF THE CABLE TELEVISION LICENSE AGREEMENT," and Licensor's project manager initials and dates the stamp (collectively "Stamped"). The stamp used to stamp plans shall contain such words as Licensor may choose from time to time.

6.11 Regulation and Relocation. Licensor shall have full authority to regulate use of the Right-of-way and to resolve competing demands and preferences regarding use of the Right-of-way and to require Licensee to cooperate and participate in implementing such resolutions. Licensee at its own expense shall promptly relocate all Licensee Improvements as requested by Licensor from time to time to accommodate any installation, removal, maintenance or other construction activities or improvements or facilities of Licensor or others now or hereafter existing or proposed to be above, under or upon any portion of the Right-of-way. Any relocation of any of Licensee's Improvements at any time, for any reason and by any person, shall be at Licensee's expense. Licensor and not Licensee shall be entitled to use any of Licensee's facilities that are abandoned in place or that are not relocated on Licensor's request.

6.12 Coordination with Encroachment Permit Process. This Agreement serves as permission from Licensor for Licensee's private improvements to exist in the Right-of-way right-of-way. Licensee shall not be required to obtain any further encroachment permit for the Cable System for that purpose. However, Licensee shall perform no construction work in the Right-of-way without obtaining through normal processes from Licensor a permit giving permission to work in the Right-of-way. Licensee shall not alter or perform any work to Licensor's improvements without first obtaining through normal process from Licensor a permit giving permission to alter Licensor's improvements. Licensee shall not in any way obstruct pedestrian or vehicular traffic within the right-of-way without first obtaining through normal processes from Licensor a permit giving permission to obstruct traffic. Amounts paid by Licensee for encroachment permits "over the counter" shall be considered Permit Fee Payment paid by Licensee under this Agreement.

VII. CABLE SYSTEM EXTENSION REQUIREMENTS

7. Cable System Extension Requirements. Licensee shall offer to provide Cable Service to all residential locations within the current and future corporate limits of the City of Scottsdale in accordance with the following requirements (the "System Extension Requirements"):

7.1 Duplicate Service. Licensee may, but is not required to, offer Cable Service to dwelling units that are offered cable service by other providers of cable service.

7.2 Offering Cable Service. Licensee shall be deemed to be offering cable service to a residential or business location if all of the following are true:

7.2.1 Licensee complies with one of the following:

7.2.1.1 Licensee has constructed the portions of the Cable System necessary for Cable Service to be readily available at the location.

7.2.1.2 Licensee is actively constructing such portion of the Cable System and diligently pursues such construction to timely completion. Absent a showing by Licensee to Licensor's city manager of circumstances beyond Licensee's reasonable control, Licensee shall complete an extension of service within one hundred eighty (180) days after a request for cable service. When a new subdivision is constructed and the developer informs Licensee of the developer's intent to construct or install utilities, Licensee shall install the Cable System in the new subdivision at the same time the other utilities are installed.

7.2.2 Following completion of such portion of the Cable System, Licensee continues to maintain, repair and operate such portions of the Cable System.

7.3 Service Density. Within six (6) months after a residential area satisfies any of the following, Licensee shall extend the Cable System at Licensee's expense and offer Cable Service to all residential locations within the area, without charging a cable extension fee:

7.3.1 A residential area has a density of forty (40) or more units per street mile.

7.3.2 A residential area has a density of five (5) or more units within 660 feet of the nearest location at which Licensee offers cable service.

7.3.3 A residential area does not meet the foregoing density requirements, but the person requesting Cable Service agrees to pay to Licensee an amount equal to the incremental cost to Licensee of extending Cable Service to the area caused by the area not meeting the density requirement.

7.3.4 If a Licensee elects to extend Cable Service to a customer to an area where the density is not sufficient to require Licensee to offer Cable Service, Licensee shall not refuse to extend service to any other location in the area solely on the grounds that the area does not have sufficient density.

7.4 Measuring Distances. The distance to extend service to a new location shall be measured from the nearest technically feasible point of extension on the Cable System to the nearest point on the parcel boundary.

7.5 Special Rules for Multiple Residential Units. The following special rules apply to apartment buildings, condominiums, gated communities and other multiple residential units where Cable Service is to be provided through common areas or other areas controlled by a landlord, owners association, manager or similar entity:

7.5.1 Each unit shall be counted as a location in determining density.

7.5.2 Licensee is not required to offer Cable Service until a mutually acceptable agreement granting Licensee reasonable access to the unit has been negotiated. Units shall not be included in determining density until such an agreement is in place.

constituents on government issues. CityCable will give priority to programs that provide information or perspectives on issues of specific interest to Scottsdale.

However, CityCable will not broadcast such "constituent report" tapes if they feature an elected official who is a candidate for elective office between the deadline for filing petitions for election (or re-election) and the day after the election.

Last revised: 8/7/03

Guidelines for election forums

CityCable will, as resources allow, televise candidate forums for city, county and state elections, as well as forums on city ballot questions.

CityCable will videotape and televise forums based on its workload and schedule. Forums must meet the following conditions:

- The forum must be sponsored by a non-partisan community group or news organization, such as the League of Women Voters, the Scottsdale Tribune or The Arizona Republic.
- The community group or news organization must provide an impartial moderator or moderators.
- A majority of candidates must appear or, in the case of a ballot question, recognized spokespersons for and against the question must be present.
- CityCable will give preference to forums scheduled in a timely manner and most easily accommodated by the CityCable production schedule.
- CityCable will give preference to forums videotaped in the CityCable studios or held in the City Hall Kiva, where its production facilities are readily available.
- CityCable reserves the right to determine whether to broadcast forums live or to videotape the events for later rebroadcast.

Qualified groups wishing to sponsor a forum may call the communications and public affairs officer at 480-312-2336 or the video production manager at 480-312-7984.

Last revised: 8/7/03

7.5.3 Licensee may offer bulk billing service, but shall not require a bulk billing agreement as a condition of providing service.

7.6 Changes to Boundaries. The following shall apply upon any change in Boundaries:

7.6.1 This Agreement shall no longer apply to an area removed from the Boundaries.

7.6.2 This Agreement shall apply to an area added to the Boundaries. Within sixty (60) days after the change to Boundaries, Licensee shall comply with the System Extension Requirements for the added area.

7.6.3 Licensor and Licensee shall coordinate to develop a process for Licensee to receive notice of changes to the Boundaries within a reasonable time.

VIII. MAINTENANCE AND OPERATIONS

8. Maintenance and Operations. Except as expressly provided below, Licensee shall be solely responsible for all maintenance, repair and utilities for the Right-of-way during the term of this Agreement. Without limitation, Licensee shall perform the following:

8.1 Right of Inspection. City shall be entitled to inspect all construction, reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms of this Agreement, the Cable Code, or other Cable Laws. All Licensor plans reviews, inspections, standards and other rights and actions with relation to Licensee's Improvements are for Licensor's sole and exclusive benefit and neither Licensee nor any other person shall rely thereon or have any rights related thereto.

8.2 Emergency Disruption by Licensor. Licensor may remove, alter, tear out, relocate or damage portions of the Cable System in the case of fire, disaster, or other emergencies if Licensor's city manager or designee deems such action to be reasonably necessary. In such event, neither Licensor nor any agent, contractor or employee of Licensor shall be liable to Licensee or its customers or third parties for any harm so caused to them or the Cable System. When practical, Licensor shall consult with Licensee in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Cable System. In any event, Licensor shall inform Licensee after such actions.

8.3 Cable System Relocation. Licensee shall, at its expense, protect, support, disconnect, relocate, or remove any of its property when required by Licensor's city manager or designee by reason of traffic conditions, public safety or welfare; street vacation; freeway or street construction or repair; change or establishment of street grade; or installation or other work relating to sewers, drains, water pipes, power lines, signal lines, transportation facilities, tracks, or any other types of structure or improvements by public agencies. Licensor may disconnect, remove or relocate any of Licensee's facilities that have not been disconnected, removed or relocated within a reasonable period of time after a request from Licensor and Licensee shall reimburse Licensor for its actual costs in disconnecting, removing, or relocating Licensee's facilities. Neither Licensor nor any agent, contractor or employee of Licensor shall be liable to Licensee, its customers or third parties for any service disruption or for any other harm caused them or the Cable System due to any activities described in this paragraph, except in the case of willful misconduct or gross negligence. Licensor shall use reasonable efforts to treat utilities using the Right-of-way in a

non-discriminatory manner with respect to activities and obligations described herein, taking into account its reasonable ability to act given the differing regulatory regimes for, laws applicable to, and claimed rights of different utility providers.

8.4 Identification. All Licensee employees, contractors and subcontractors who seek access to residential or private property, Multiple Dwelling Units or adjacent property or to commercial premises shall wear on their clothing a clearly visible identification card bearing their name and photograph and Licensee's logo or name. Licensee shall account for all Licensee issued identification cards at all times. Every service vehicle of Licensee, its contractors or subcontractors shall be clearly identified as such to the public. Licensee vehicles shall have Licensee's logo plainly visible. Vehicles of contractors and subcontractors working for Licensee shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Licensee.

8.5 Construction Notification. Licenser may establish requirements for notification of adjacent residents prior to construction.

8.6 Maintenance by Licenser. Licenser has no maintenance or repair obligations for the Right-of-way.

8.7 Maintenance by Licensee. Licensee shall at all times repair and maintain its equipment in the Right-of-way at Licensee's sole expense in a first-class, sound, clean, safe and attractive manner, meeting or exceeding the manner of maintenance of first class comparable facilities in the southwest United States as determined in Licenser's reasonable discretion. Following installation, repair or replacement work performed in the Right-of-way, Licensee shall restore disturbed areas of the Right-of-way to a condition equal to or better than the condition of the Right-of-way immediately prior to Licensee's activities. The preceding sentence does not require Licensee to repair or maintain Licenser's or third party facilities at the Use Area unless such work is attributable in whole or in part to Licensee's use of the Use Area. Licensee shall repair or replace to Licenser's standards, rules and policies published from time to time all pavement, sidewalks, curbs, landscaping and other Licenser's improvements of any description that may be damaged in the course of Licensee's activities under this Agreement.

8.8 Communications Operations Restriction. Licensee shall not install, operate, or allow the use of equipment, methodology or technology that may or would interfere with the optimum effective use or operation of Licenser's existing or future fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, Licensee shall immediately discontinue using the equipment, methodology or technology that causes the interference until Licensee takes corrective measures to alter the Cable System to eliminate such interference. Any such corrective measures shall be made at no cost to Licenser.

8.9 Signs. All Cable System signage is prohibited except Licensee shall install and maintain all signs and markings required for safe use of the Right-of-way by the public and other Right-of-way users.

8.10 Noise. Except for burglar alarms and other safety devices, devices for making noise are prohibited.

8.11 Governmental and Neighborhood Relations. Licensee shall comply with any legal rights held by any applicable homeowner's association or similar organization in the Right-of-way.

Licensee shall conduct its activities in coordination with Licensor as necessary to maintain good relations with all governmental and other entities having jurisdiction over the Right-of-way, all other occupants of the Right-of-way, and the occupants of surrounding real property. Licensee shall immediately give to Licensor notice of any actual or threatened dispute, violation or other disagreement relating to the Right-of-way. Licensee is not an agent for Licensor.

8.12 Licensee's Agent. Licensee shall at all times retain on call available to Licensor by telephone an active, qualified, competent and experienced person to supervise all activities upon and operation of the Right-of-way and who shall be authorized to represent and act for Licensee in matters pertaining to all emergencies and the day-to-day operation of the Right-of-way and all other matters affecting this Agreement. Licensee shall also provide notice to Licensor of the name, street address, electronic mail address, and regular and after hours telephone and telefax numbers of a person to handle Licensee's affairs and emergencies at the Right-of-way. Unless and until Licensee gives notice to Licensor of a new representative, Licensee's representative shall be the staff of Licensee's regional operating center. The current telephone number of the regional operating center is (623) 322-7278. Any change shall be given in writing hand-delivered to Licensor's cable television administrator manager as well as in the manner stated for notices under this Agreement.

8.13 Coordination Meetings. Licensee shall meet with Licensor and other right-of-way users from time to time as requested by Licensor to coordinate and plan construction on the Right-of-way and all matters affected by this Agreement.

8.14 Hazardous Substances. Licensee's activities upon or about the Right-of-way shall be subject to the following regarding any hazardous or toxic substances, waste or materials or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

8.14.1 Licensee shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Right-of-way. The prohibitions of the preceding sentence only shall not apply to:

8.14.1.1 Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the Right-of-way. Such materials must be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or small portable tanks that are being used for fueling permitted construction machinery ("Minimal Fueling").

8.14.1.2 Electric backup generators that run on natural gas.

8.14.1.3 Electric backup batteries.

8.14.2 Licensee shall dispose of any Toxic Substances away from the Right-of-way as required by law and as reasonably required by Licensor.

8.14.3 Licensee shall not use the Right-of-way in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environmental Quality or any other governmental agency. The preceding sentence does prohibit ordinary permits required for routine dust control measure.

8.14.4 In addition to and without limitation of any other indemnities or obligations, Licensee shall pay, indemnify, defend and hold Licensor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Right-of-way attributable to or caused by Licensee or anyone using the Right-of-way under this Agreement or acting or claiming under Licensee or this Agreement or otherwise relating to this Agreement.

8.14.5 Licensee shall immediately notify Licensor of any Toxic Substance at any time discovered or existing upon the Right-of-way.

8.14.6 Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensee acknowledges the possibility that the Right-of-way may contain actual or presumed asbestos and other Toxic Substances.

8.14.7 Within twenty-four (24) hours after any violation by Licensee of this Agreement pertaining to Toxic Substances, Licensee shall report such violation to Licensor in writing.

8.15 Disturbance of Toxic Substances. Prior to undertaking any construction or other significant work, Licensee shall cause the Right-of-way to be inspected to prevent disturbance of potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Licensee shall cause the contractor or other person performing such work to give to Licensor notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials, and will indemnify, defend and hold Licensor harmless against any disturbance in such materials in the course of the contractor's or other person's work. Licensee shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Licensee in connection with the Right-of-way to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Licensee shall promptly deliver to Licensor copies of all reports or other information regarding Toxic Substances.

8.16 Actions by Others. Licensee shall be responsible to ensure compliance with this Agreement by all persons using the Right-of-way through or under Licensee or this Agreement. Licensee shall prevent all such persons from doing anything that this Agreement prohibits Licensee from doing.

IX. BREACH BY LICENSEE

9. Breach by Licensee. Licensee shall comply with the terms and provisions of this Agreement and shall cause all persons using the Right-of-way under the authority granted Licensee by this Agreement to do the same. Licensee's failure to do so shall be a material breach by Licensee of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" by Licensee of Licensee's material obligations under this Agreement:

9.1.1 If Licensee shall be in arrears in the payment of Fee Payment due and not paid and shall not cure such arrearage within ten (10) days after Licensor has notified Licensee of such arrearage.

9.1.2 If Licensee willfully fails to provide Cable Service in accordance with this Agreement over a substantial portion of the Boundaries for ninety-six (96) consecutive hours, unless Licensor authorizes a longer interruption of services.

9.1.3 If Licensee, for any period, willfully stops operating the Cable System as it is required to operate it under this Agreement in a substantial portion of the Boundaries.

9.1.4 If Licensee shall fail to maintain any insurance required by this Agreement.

9.1.5 If Licensee shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Licensee's or such other person's property shall be made for the benefit of creditors or if Licensee or such other person dies or is not regularly paying its debts as they come due (collectively a "Licensee Insolvency").

9.1.6 If any material information Licensee provides concerning activities, sales or other matters concerning the Right-of-way or this Agreement is false.

9.1.7 If Licensee shall violate the provisions of the documents by which Licensor acquired its interests in the Right-of-way.

9.1.8 If the issuer of any letter of credit shall fail for any reason to timely and fully honor any request by Licensor for funds or other performance under the instrument and Licensee fails to cause the issuer to or some other person to honor the request within ten (10) days after Licensor notifies Licensee that such request has not been honored.

9.1.9 If Licensee shall fail to timely pay amounts herein required to be paid by Licensee to any person other than Licensor. Such failure to pay an amount shall not be an event of default if Licensee gives immediate notice to Licensor of Licensee's intent to challenge the amount claimed to be due to the third person, Licensee does in fact promptly challenge said amount and, Licensee delivers to Licensor with said notice, bonds or other financial security in Licensor's discretion adequate to assure Licensee's ability to pay the disputed amount and adequate to protect Licensor and the Right-of-way from adverse consequences of Licensee's failure to pay.

9.1.10 If Licensee shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the Right-of-way or timely pay any taxes pertaining to the Right-of-way and shall not cure such failure within thirty (30) days.

9.1.11 If Licensee shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. After Licensor has once given

notice of any failure by Licensee to comply with any provision of this Agreement, the following shall constitute a repeated failure by Licensee to comply with such provision:

9.1.11.1 Another failure to comply with any provision of this Agreement during the following thirty (30) day period.

9.1.11.2 Three (3) or more failures to comply with any provision of this Agreement during any ninety (90) day period.

9.1.11.3 Six (6) or more failures to comply with any provision of this Agreement during any twelve (12) month period.

9.1.12 If Licensee shall fail to or neglect to timely and completely do or perform or observe any other provisions contained herein and such failure or neglect shall continue for a period of thirty (30) days after Licensor has notified Licensee in writing of such failure or neglect.

9.2 Licensor's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Licensor may, at its option and from time to time, exercise at Licensee's expense any or all or any combination of the following cumulative remedies in any order and repetitively at Licensor's option:

9.2.1 Terminate this Agreement. Termination of this Agreement due to Licensee's breach or for any other reason does not terminate Licensee's obligations arising during the time simultaneous with or prior to or the termination, and in no way terminates any of Licensee's liability related to any breach of this Agreement. City shall not use such termination power without first conducting a hearing before its city manager or designee at which Licensee may appear and present evidence. The person conducting the hearing shall state in writing his or her determination of the validity of the proposed termination and shall summarize his or her findings on the controversy. Such findings may be appealed by Licensor or Licensee to a court for de novo review.

9.2.2 Cause a receiver to be appointed for the continuing performance of Licensee's obligations at the Right-of-way.

9.2.3 Pay or perform, for Licensee's account, in Licensee's name, and at Licensee's expense, any or all payments or performances required hereunder to be paid or performed by Licensee.

9.2.4 Abate at Licensee's expense any violation of this Agreement.

9.2.5 Notwithstanding anything in this Agreement to the contrary, unilaterally and without Licensee's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter-of-credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security pledged for Licensor's benefit pursuant to this Agreement and use the proceeds for any remedy permitted by this Agreement.

9.2.6 Be excused without any liability to Licensee therefor from further performance of any or all obligations under this Agreement.

9.2.7 Insist upon Licensee's full and faithful performance under this Agreement and upon Licensee's full and timely payment of all amounts during the entire remaining term of this Agreement.

9.2.8 Require an additional security deposit adequate in Licensors sole discretion to protect Licensor and the Right-of-way in light of Licensee's history of performance under this Agreement.

9.2.9 Assert, exercise or otherwise pursue at Licensee's expense any and all other rights or remedies, legal or equitable, to which Licensor may be entitled, subject only to the limitation set out below on Licensor's ability to collect money damages in light of the Violation Fee Payment.

9.3 Violation Fee Payment. Licensee shall pay Violation Fee Payment to Licensor as follows:

9.3.1 Licensee's failure to comply with time and performance requirements in this Agreement specifies a Violation Fee Payment amount will result in money damage to Licensor for which it is and will be impracticable to determine the actual amount. Therefore, the parties have agreed that, in lieu of Licensee paying money damages to Licensor for Licensee's violation of this Agreement for which this Agreement specifies a Violation Fee Payment amount, Licensee shall pay Violation Fee Payment.

9.3.2 Violation Fee Payment is only intended to remedy direct money damage that Licensor suffers because of Licensee's breach. Licensee's payment of Violation Fee Payment does not in any way excuse any breach by Licensee of this Agreement or limit in any way Licensee's obtaining any other legal or equitable remedy provided by this Agreement or otherwise for such breach.

9.3.3 Except as expressly stated in this paragraph, no cure period applies to the accrual of Violation Fee Payment. For example, Violation Fee Payment for Licensee's failure to comply with the customer service standards shall begin to accrue on the first day that Licensee fails to remedy a violation of customer service standards after notice from Licensor of the violation.

9.3.4 Licensee may elect to draw upon the letter of credit to collect the Violation Fee Payment.

9.3.5 The amount of the Violation Fee Payment per day or part thereof is as follows:

9.3.5.1 The amount of \$600.00 per day for Licensee's failure to properly restore the public right-of-way or to correct related violations of specifications, code, ordinance or standards within seven (7) working days after Licensor's notice to correct such defects. Such Violation Fee Payment shall be in addition to any cost the Licensor may incur to restore the right-of-way or correct the violation.

9.3.5.2 The amount of \$150.00 per day for each failure to comply with customer service standards required by this Agreement.

9.3.5.3 The amount of \$500.00 for each failure to comply with customer service standards required by this Agreement where the measure of performance is on an aggregate basis and cannot be reasonably categorized as a daily non-performance.

9.3.5.4 The amount of \$150.00 for each failure by Licensee to test, analyze or report on the performance of the Cable System as required by the Federal Communications Commission or this Agreement.

9.3.5.5 The amount of \$250.00 per day for each failure to make Licensee's books and records available as required by this Agreement.

9.3.5.6 The amount of \$2,750.00 per day for any unauthorized partial or total assignment of this Agreement.

9.3.5.7 The amount of \$150.00 per day for Licensee's failure to cure any other violation of the License, following such notice and opportunity to cure as may be allowed under this Agreement.

9.3.5.8 The amount of \$500.00 per instance of any other action or non-action by the Licensee regarding a material requirement of this Agreement to which none of the above reasonably apply and damages cannot be estimated on a daily basis.

9.3.6 Violation Fee Payments shall be assessed as follows:

9.3.6.1 If Licenser determines that Licensee is liable for Violation Fee Payment, then Licenser shall issue to Licensee a notice of Licenser's assessing a Violation Fee Payment. The notice shall set forth the nature of the violation and the amount of the assessment.

9.3.6.2 Licensee shall have thirty (30) days after the notice to pay for the Violation Fee Payment or give Licenser notice contesting the assertion of noncompliance.

9.3.6.3 If Licensee fails to respond to the notice, Licensee shall pay the Violation Fee Payment. Otherwise, Licenser shall schedule a public hearing to investigate whether the Violation Fee Payment is properly assessed. Licenser shall provide Licensee at least ten (10) days prior written notice of such hearing, which shall specify the time, place and purpose of such hearing. At such hearing, Licensee shall be provided a full and fair opportunity to be heard and present evidence.

9.3.6.4 Licensee may appeal the outcome of the hearing to an appropriate court, which shall have the power to review Licenser's decision "de novo". Such appeal to the appropriate court must be taken within sixty (60) days after the issuance of Licenser's determination. Otherwise, the outcome of the hearing shall be final and conclusive as between Licensee and Licenser.

9.4 Effect of Abandonment. In addition to Licenser's other rights, if the Licensee abandons the entire cable system during the term of this Agreement, or fails to operate the cable system in accordance with its duty to provide continuous service, Licenser, at its option, may acquire ownership of the cable system as provided under federal law; operate the cable system; designate another entity to operate the cable system temporarily until Licensee restores service under conditions acceptable to Licenser or until the license is revoked and a new Licensee selected by Licenser is providing service; or obtain an injunction requiring Licensee to continue

operations. If Licensor is required to operate or designate another entity to operate the cable system, Licensee shall reimburse Licensor or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the cable system.

9.5 Non-waiver. Licensee acknowledges Licensee's unconditional obligation to comply with this Agreement. No failure by Licensor to demand any performance required of Licensee under this Agreement, and no acceptance by Licensor of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way Licensor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Licensor of Fee Payment payments or other performances hereunder shall be deemed a compromise or settlement of any right Licensor may have for additional, different or further payments or performances. Any waiver by Licensor of any breach of condition or covenant herein contained to be kept and performed by Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Licensor from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by Licensor or Licensee concerning payments or other performances due hereunder, or failure by Licensor to demand any performance hereunder, shall excuse Licensee from compliance with this Agreement nor estop Licensor (or otherwise impair Licensor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against Licensor unless made in writing by a duly authorized representative of Licensor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LICENSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

9.6 Reimbursement of Licensor's Expenses. Licensee shall pay to Licensor within thirty (30) days after Licensor's demand any and all amounts expended or incurred by Licensor in performing Licensee's obligations together with interest thereon at the rate of twelve percent (12%) per annum from the date expended or incurred by Licensor.

9.7 Inspection. Licensor shall have access to all portions of the Right-of-way at all times and without notice for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Right-of-way or exercising Licensor's other rights hereunder. Licensee shall promptly undertake appropriate action to rectify any deficiency (identified by Licensor during such inspections or otherwise) in Licensee's compliance with this Agreement. This paragraph does not limit Licensor's other rights of access to the Right-of-way elsewhere in this Agreement or otherwise. This right of access is in addition to access rights for Licensor inspectors or other employees and officers acting within their legal authority.

9.8 Breach by Licensor. Notwithstanding anything in this Agreement to the contrary, in the event Licensor at any time is required to pay to Licensee any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Licensee to Licensor that the amount has become payable or that the performance is due. In the event a cure cannot be effected during that period, Licensor shall not be in default so long as Licensor commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) days after the notice.

9.9 Right to Setoff and Credit. In addition to its other rights and remedies under this Agreement, Licensor shall have the right to setoff and credit from time to time and at any time, any

and all amounts due from Licensee to Licensors, whether pursuant to this Agreement or otherwise, against any sum which may be due from Licensors to Licensee pursuant to this Agreement or otherwise.

9.10 Enforcement. Either party shall have the right to pursue litigation or otherwise enforce its rights under this Agreement or other legal or equitable rights it might have.

X. TERMINATION

10. Rights at Termination. The following provisions shall apply at the expiration of the term hereof or upon any other termination of this Agreement:

10.1 Surviving Obligations. Expiration of this Agreement (or Licensors' termination of this Agreement due to an Event of Default or any other reason) does not terminate Licensee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.

10.2 Delivery of Possession. Licensee shall cease using the Right-of-way for provision of cable services. Licensee shall without demand, peaceably and quietly quit and deliver up the Right-of-way to Licensors thoroughly cleaned, in good repair, and with all utilities operating, with the Right-of-way maintained and repaired and in as good order and condition, reasonable use and wear excepted, as the Premise now are or in such better condition as the Right-of-way may hereafter be placed. Upon termination, Licensee shall deliver to Licensors any security deposits, prepaid rents, or other amounts for which Licensors deems a claim may be made respecting the Right-of-way.

10.3 Continuation of Business. Upon termination of this Agreement, through passage of time or otherwise, Licensee shall aid Licensors, unless directed otherwise by Licensors, in all ways in continuing uninterruptedly the Cable Service herein described. If requested by Licensors, Licensee shall continue providing cable service (either alone or if requested by Licensors in cooperation with Licensors or new operators) for a period until new licensees or operators are in place and able to offer cable services over their respective cable or other communications system.

10.4 New Approvals and Agreements. Upon expiration or termination of this Agreement for any reason, Licensee shall no longer have the right to use the Right-of-way to provide cable service. Licensee shall have a one hundred eighty (180) day period thereafter to obtain from Licensors such licenses, permits or other approvals or agreements as Licensors may then be entitled to lawfully require for Licensee to continue using the cable system in the Right-of-way for any other communication purpose Licensee may desire to provide. After such period, any right for the cable system to be in the Right-of-way shall be pursuant to such new approvals and agreements and not pursuant to this Agreement.

10.5 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Licensee shall provide to Licensors upon demand a confirmation of termination of this Agreement executed and acknowledged by Licensee and by all persons who claim that they have been received from or through Licensee any interest in or right to use the Right-of-way.

10.6 Fixtures and Improvements. If the time comes that Licensee does not have the right to provide any communication service over the Cable System, if Licensee does not sell the cable system intact to Licensors or another party who obtains the right to use the cable system in the Right-of-way, then Licensee shall have a period of one hundred eighty (180) days to remove

any portion of the Cable System that can be removed without disturbing pavement or other improvements or equipment of Licensor in the Right-of-way or improvements or equipment of third parties on the Right-of-way. Title to any and all personal property installed by Licensee upon the Right-of-way that is not removed during that period shall automatically vest in Licensor.

XI. INDEMNITY AND INSURANCE

11. Insurance Responsibility. During the entire term of this Agreement, Licensee shall insure its property and activities at and about the Right-of-way and shall provide insurance and indemnification as follows:

11.1 Insurance Required. Not later than the date of this Agreement, and at all times thereafter when Licensee is occupying or using the Right-of-way in any way, Licensee shall obtain and cause to be in force and effect the following insurance:

11.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Ten Million and No/100 Dollars (\$10,000,000.00) for each occurrence, a limit of Ten Million and No/100 Dollars (\$10,000,000.00) for products and completed operations annual aggregate, and a limit of Ten Million and No/100 Dollars (\$10,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this Agreement. The policy will cover Licensee's liability under the indemnity provisions of this Agreement. The policy shall contain a "separation of insureds" clause.

11.1.2 Broadcast Insurance. Broadcast/media communications liability coverage ("Broadcast Insurance") with a limit of Ten Million and No/100 Dollars (\$10,000,000.00) for each claim and in the aggregate providing coverage for claims, expenses allegations, damages and other harm arising from use of the Cable System.

11.1.3 Automobile Liability. Automobile liability insurance with a limit of One Million Dollars (\$1,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Licensee's use of the Right-of-way. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off loading.

11.1.4 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.

11.1.5 Special Risk Property. Unless waived by Licensor in writing, all risk property insurance covering damage to or destruction of all real and personal improvements to the Right-of-way, including without limitation, all improvements existing upon the Right-of-way prior to this Agreement or hereafter constructed in an amount equal to full replacement cost of all such improvements. Such insurance shall be special causes of loss policy form (minimally including perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, collapse and flood). Coverage shall include pollutant clean up and removal with minimum limits coverage of Fifty-Thousand Dollars (\$50,000.00).

11.1.6 Other Insurance. Any other insurance Licensor may reasonably require for the protection of Licensor and Licensor's employees, officials, representatives, officers and agents (all of whom, including Licensor, are collectively "Additional Insureds"), the Right-of-way, surrounding property, Licensee, or the activities carried on or about the Right-of-way. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities could reasonably purchase.

11.2 Policy Limit Escalation. Licensor may elect by notice to Licensee to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that Licensor reasonably determines to affect the prudent amount of insurance to be provided.

11.3 Form of All Insurance. All insurance provided by Licensee with respect to the Right-of-way, whether required by this Agreement or not, shall meet the following requirements:

11.3.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted, except for Broadcast Insurance.

11.3.2 If Licensee uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

11.3.3 Policies must also cover and insure Licensee's activities relating to the business operations and activities conducted away from the Right-of-way.

11.3.4 Licensee must clearly show by providing copies of insurance certificates, formal endorsements or other documentation acceptable to Licensor that all insurance coverage required by this Agreement is provided.

11.3.5 Licensee's insurance shall be primary insurance with respect to claims arising out of Licensee's operations, activities and obligations under this Agreement.

11.3.6 Except for Broadcast Insurance, all policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against Licensor, and the other Additional Insureds.

11.3.7 No deductibles, retentions, or "self-insured" amounts shall exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate per year, per policy. Licensee shall be solely responsible for any self-insurance amount or deductible. At any time Licensee's net worth is more than One Hundred Million Dollars (\$100,000,000.00), Licensee may elect to self insure up to the amount of Ten Million and No/100 Dollars (\$10,000,000.00).

11.3.8 All policies except workers' compensation and Broadcast Insurance must name Licensor and the other Additional Insureds as additional insureds. Licensee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement with respect to claims arising out of Licensee's operations, activities and obligations under this Agreement.

11.3.9 All policies must require the insurer to provide Licensor with at least thirty (30) days prior notice of any cancellation. The insurer's duty to notify Licensor of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

11.3.10 All policies shall require that notices be given to Licensor in the manner specified for notices to Licensor under this Agreement.

11.4 Insurance Certificates. Licensee shall evidence all insurance by furnishing to Licensor certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that Licensor and the other Additional Insureds are additional insureds. Certificates must be in a form acceptable to Licensor. Licensee shall provide updated certificates at Licensor's request.

11.5 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Licensor. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

11.6 No Representation of Coverage Adequacy. By requiring insurance herein, Licensor does not represent that coverage and limits will be adequate to protect Licensee. Licensor reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, Licensee's obligation to maintain the required insurance at all times.

11.7 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Licensee (and all other persons using, acting, working or claiming through or for Licensee or this Agreement (if they or their subcontractor, employee or other person or entity hired or directed by them participated in any way in causing the claim in question)) shall jointly and severally indemnify, defend and hold harmless Licensor and all other Additional Insureds for, from and against any and all claims or harm related to the Right-of-way or this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of any use of the Right-of-way or other property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Right-of-way or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in part by Licensor or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Licensee or Licensor may be liable. As a condition to Licensor's executing this Agreement, Licensee specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Licensee for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to

Licensors or Licensee's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by Licensor or Licensee under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

11.7.1 Claims arising only from the sole gross negligence or intentionally wrongful acts of Licensor.

11.7.2 Claims that the law prohibits from being imposed upon the indemnitor.

11.8 Risk of Loss. Licensee assumes the risk of any and all loss, damage or claims related to Licensee's use of the Right-of-way or other property of Licensor, Licensee or third parties throughout the term hereof. Licensee shall be responsible for any and all damage to its property and equipment related to this Agreement and shall hold harmless and indemnify Licensor and all other Additional Insureds, regardless of the cause of such damages.

11.9 Insurance to be Provided by Others. Licensee shall cause its contractors or other persons occupying, working on or about, or using the Right-of-way pursuant to this Agreement to be covered by their own or Licensee's insurance as required by this Agreement.

XII. CONDEMNATION

12. Condemnation. Licensor has not relinquished any right of condemnation or eminent domain over the Right-of-way.

XIII. DAMAGE TO RIGHT-OF-WAY

13. Damage to Right-of-way. Licensee shall repair any damage to the Cable System caused by damage to or destruction of the Right-of-way by fire, explosion, the elements, the public enemy, or other casualty.

XIV. LICENSEE'S RECORDS

14. Licensee's Records. During the entire term of this Agreement, Licensee shall keep records and provide information to Licensor as follows:

14.1 Confidential Records. To the fullest extent permitted by law, Licensor agrees to treat on a confidential basis any confidential information disclosed by Licensee to Licensor under this article. In so according confidential treatment, disclosure of Licensee's records by Licensor shall be limited to only those of its employees, representatives and agents that have a need to know, and that are in a confidential relationship with Licensor. In the event a third party seeks to obtain confidential information (by public records requests or otherwise), Licensor's sole obligation shall be to inform Licensor of the request so that Licensee may assert and defend its privacy rights, if any, in the information.

14.2 Scope of Information. Unless otherwise specified, all of Licensee's recordkeeping and disclosure obligations under this article include and are limited to information about this Agreement and Licensor's and Licensee's rights and obligations hereunder (collectively, the "Covered Information"). Without limitation, Covered Information includes records required to be kept by Licensee pursuant to the rules and regulations of the FCC, and financial information underlying written reports. Covered Information does not include personally identifiable

customer information without the customer's consent in violation of Section 631 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. Section 55.1.

14.3 Supplemental Reports. Licensee shall deliver to Licensors written reports (and, if requested by Licensors, a presentation to Licensors's governing council or designee) covering such Covered Information as Licensors may request from time to time. Without limitation, such reports shall include the following:

14.3.1 Licensee shall provide Licensors monthly reports on its compliance with Customer service standards set forth herein. Such reports shall include a report of Licensee's compliance with FCC Customer performance indicators for the previous three (3) months.

14.3.2 Licensee shall annually provide Licensors documentation evidencing Licensee's compliance with the terms of this Agreement. Licensors shall determine the form to be completed by Licensee to document Licensee's performance and the dates for submitting such forms.

14.3.3 Licensee shall participate in any annual performance review of Licensee's performance of the terms of this Agreement. Licensors may notice such reviews as public review hearings with the opportunity for public participation.

14.3.4 Licensee shall provide Licensors with the reports, financial information, documents and information required by the Cable Code.

14.4 Records Inspection. At Licensee's expense, Licensee shall:

14.4.1 Permit and assist Licensors and its representatives at all reasonable times to inspect, audit, and copy Licensee's records of Covered Information.

14.4.2 Make the records of Covered Information (and reasonable accommodations for Licensors's audit and inspection) available to Licensors at Licensee's offices in Maricopa County, Arizona (or at another location requested by Licensors within the corporate limits of the City of Scottsdale).

14.4.3 Cause Licensee's employees and agents and accountants to give their full cooperation and assistance in connection with Licensors access to the Covered Information.

14.5 Standards for Records. Licensee shall maintain a standard, modern system of recordkeeping for the Covered Information and shall keep and maintain proper and accurate books and other repositories of information relating to the Covered Information in accordance with generally accepted accounting principles applied on a consistent basis. In the event Licensors does not receive Covered Information, Licensors shall have the right to estimate the information that is not provided, which estimate shall be binding upon Licensee.

14.6 Record Retention. Licensee shall preserve records of the Covered Information in a secure place at Licensee's corporate headquarters in the continental United States and available to Licensors on request for review within the City of Scottsdale, Maricopa County, Arizona for a period ending seven (7) years after the time period reported by the records.

14.7 Record Media Included. Licensors's and Licensee's rights and obligations regarding the Covered Information apply regardless of the type of media, materials, or data repositories that

may contain the Covered Information. Licensor's rights to the Covered Information apply regardless of whether the Covered Information is stored on recordings, notes, ledgers, correspondence, reports, drawings, memoranda, or other repository of Covered Information.

14.8 Costs of Audit. If an audit, inspection or examination discloses underpayments (or other matters adjusted in favor of Licensor) of any nature that exceed five percent (5%) of any payments or single payment, Licensee shall pay to Licensor Licensor's actual cost (based on the amount paid by Licensor, or based on reasonable charges charged by private auditors and other service providers for comparable work if the examination is performed by Licensor's employees) of the examination, together with late fees, interest, and other amounts payable in connection with such adjustments or payments. Any adjustments and/or payments due as a result of any such examination shall be made within a reasonable amount of time (not to exceed 30 days) after Licensor gives to Licensee notice of Licensor's findings. Any such audit shall take place within one thousand ninety-five (1,095) days following the close of each of Licensee's fiscal years.

XV. COMPLIANCE WITH LAW

15. Compliance with Law. Licensee shall perform its obligations under this Agreement in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Licensee shall comply with all and each of the following:

15.1 Future Municipal Legislation. Licensor has not contracted away any of its legislative authority by this Agreement. However, if Licensor uses its legislative authority to enact city ordinance or code to increase the financial or in-kind extractions from Licensee, including but not limited to channels, all right-of-way related permit fees, Gross Revenue based License Fee Payments under this Agreement, or to require Licensee to provide more channels or Community Service or run of station ad spots than this Agreement requires Licensee to provide, then Licensor agrees that Licensor shall pay to Licensee under this paragraph of this Agreement an amount adequate to reimburse Licensee for the value of said additional extractions including but not limited to increased Gross Revenue based License Fee Payment and an amount adequate to compensate Licensee for the additional channels and Community Service provided at Licensee's standard rates (or, if there are not standard rates, then its reasonable value).

15.2 Applicability of Municipal Law. Without limitation, Licensee shall comply with municipal laws as follows:

15.2.1 Licensee acknowledges that this Agreement does not constitute, and Licensor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Licensee, the Right-of-way or Licensee's use of the Right-of-way.

15.2.2 All of Licensee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Licensee.

15.2.3 This Agreement is not intended to diminish any performances that would be required of Licensee by law if this Agreement had been made between Licensee and a private citizen.

15.2.4 Licensors by this Agreement cannot and has not relinquished or limited any right of condemnation or eminent domain over the Right-of-way or any other property related to this Agreement or within the Right-of-way.

15.2.5 Licensors rights and remedies hereunder for Licensees failure to comply with all applicable laws supplement and are in addition to and do not replace otherwise existing powers of the City of Scottsdale or any other governmental body.

15.3 Building and Other Permits. Licensee shall obtain at its own expense all building or other permits in connection with all construction performed by Licensee, shall comply with all zoning, building safety, fire, pavement and curb cut and restoration, and similar laws and procedures of every description and shall pay all fees, charges and other amounts pertaining thereto. Licensors payment of the Permit Fee Payment under this Agreement shall be in lieu of Licensors payment of Ordinary Permit Charges related to such laws and procedures.

15.4 Encroachment Permit. This document constitutes an "encroachment permit" under Chapter 47 of the Scottsdale Revised Code to the extent of allowing the Cable System as it exists on the date of this Agreement to exist on the Right-of-way. Before performing any work on the Right-of-way, Licensee shall obtain the following additional encroachment permits, as applicable:

15.4.1 Permission to Work in the Right-of-way.

15.4.2 Permission to Alter City Improvements.

15.4.3 Permission to Obstruct Traffic.

15.4.4 Any other applicable permits regarding work in Scottsdale right-of-way.

15.5 Taxes, Liens and Assessments. In addition to all other amounts herein provided and to the extent consistent with applicable law, Licensee shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description that during the term of this Agreement may be levied upon or assessed upon or with respect to Licensees use of the Right-of-way, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Right-of-way and improvements and other property thereon, whether belonging to Licensors or Licensee. Licensee shall pay, indemnify, defend and hold harmless Licensors and the Right-of-way and all interests therein and improvements thereon from any and all such obligations, including any interest, penalties and other expenses which may be imposed, and from any lien therefor or sale or other proceedings to enforce payment thereof.

15.6 Change in Law. If Licensors determines that a material provision of this Agreement is affected by any subsequent action of the state or federal government, Licensors shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Agreement. Where substantial and material provisions of this Agreement are invalidated by subsequent action of the state or federal government, Licensors and Licensee shall renegotiate the terms of this Agreement to carry out its intent as much as possible. If Licensee at any time believes that any state or federal law or regulation requires Licensee to perform any service, or shall permit Licensee to perform any service, or shall prohibit Licensee from performing any service in conflict with the terms of this Agreement or of any municipal law, then as soon as possible following knowledge thereof Licensee shall notify Licensors of the point of conflict believed to exist.

15.7 Permits. This Agreement does not relieve Licensee of the obligation to obtain permits, licenses and other approvals from Licensor or other units of government, that are required for the erection, construction, reconstruction, installation, operation or maintenance of the Cable System or provision of Cable Services; or from compliance with generally applicable municipal codes, ordinances, laws and policies such as zoning and land use ordinances and regulations, pavement cut and restoration ordinances and regulations, subdivision and project improvement ordinances, curb cut permits, building permits, right-of-way permits and the like. Licensor's payment of the Permit Fee Payment under this Agreement shall be in lieu of Licensor's payment of Ordinance Permit Charges related to such laws and procedures.

15.8 Right-of-way Regulations. Licensor reserves the right to adopt, amend and enforce against Licensee rules and regulations governing the operation of the Right-of-way and Licensee's activities thereon.

15.9 Preemption. The parties acknowledge that the terms of this Agreement are affected by various existing Federal and state laws, which may vary during the term of this agreement, and that principles of preemption and other normal legal principles shall apply in determining the manner in which such future laws and regulations affect this Agreement.

XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Licensee (and any assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in strict compliance with the following:

16.1 Assignments Affected. Every assignment of any of Licensee's interest in the Right-of-way or this Agreement or any of Licensee's rights or interests hereunder is prohibited unless Licensee first receives from Licensor notice of Licensor's consent to the assignment. All references in this Agreement to assignments by Licensee or to assignees shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

16.1.1 Any voluntary or involuntary assignment, conveyance or transfer of the Right-of-way or any interest therein or any rights under this Agreement, in whole or in part.

16.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting Licensee's rights to use the Right-of-way (collectively "Liens").

16.1.3 Any assignment by Licensee of any interest in this Agreement for the benefit of creditors, voluntary or involuntary.

16.1.4 A Licensee insolvency.

16.1.5 The occurrence of any of the foregoing by operation of law or otherwise.

16.1.6 The occurrence of any of the foregoing with respect to any assignee or other successor to Licensee.

16.2 Pre-approved Assignments. Subject to certain conditions hereafter stated, Licensor hereby consents to certain assignments (the "Pre-approved Assignments"). Only the following assignments are Pre-approved Assignments:

16.2.1 Complete Sale of Cable System. Licensee's complete assignment of all of Licensee's rights and interests in the Right-of-way and this Agreement to a single assignee who assumes all of Licensee's obligations relating thereto. Such assignee must meet all of the following requirements, as determined by Licensor in Licensor's reasonable discretion (a "Qualified Operator):

16.2.1.1 The assignee has experience, management, credit standing and financial capacity and other resources equal to or greater than Licensee's and adequate to successfully perform under this Agreement.

16.2.1.2 The assignee must be experienced in the management and operation of similar projects.

16.2.1.3 The assignee must assume all of Licensee's obligations relating to this Agreement.

16.2.1.4 The assignee has a net worth of not less than One Billion and No/100 Dollars (\$1,000,000,000.00).

16.2.2 Stock Transfers. The transfer of stock, regardless of quantity.

16.2.3 Merger. The merger or consolidation of Licensee with another entity that is a Qualified Operator.

16.3 Limitations on Assignments. Licensor's consent to any assignment, including without limitation, Pre-approved Assignments, is not effective until the following conditions are satisfied:

16.3.1 Except for the sale of stock, Licensee shall provide to Licensor the following:

16.3.1.1 Complete copies of documents accomplishing the assignment.

16.3.1.2 Each assignee must execute an assumption of this Agreement in form acceptable to Licensor.

16.3.2 Each Pre-approved Assignment must satisfy all other requirements of this Agreement pertaining to assignments.

16.4 Assignment Remedies. Any assignment without Licensor's consent shall be void and shall not result in the assignee obtaining any rights or interests in, under or related to this Agreement. Licensor may, in its sole discretion and in addition to all other remedies available to Licensor under this Agreement or otherwise, and in any combination, terminate this Agreement, collect Fee Payment from the assignee and/or declare the assignment to be void, all without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive Licensor's consent.

16.5 Effect of Assignment. Consent by Licensor to an assignment shall not relieve Licensee from obtaining Licensor's consent to any further assignment. No assignment shall release Licensee from any liability hereunder.

16.6 Unity of Assignment. Any assignment must cover Licensee's entire interest in this Agreement and the Right-of-way. All of Licensee's rights under this Agreement must at all times remain with the Licensee's interest under the Lease so that Licensor is only dealing with a single Licensee as to this Agreement and the Right-of-way.

16.7 Enforceability after Assignment. No consent by Licensor shall be deemed to be a novation. Licensor's consent to any assignment does not in any way expand or modify this Agreement or waive, diminish or modify any of Licensor's rights or remedies under this Agreement. This Agreement shall be enforceable personally and in total against Licensee and each successor, partial or total, and regardless of the method of succession, to Licensee's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence.

16.8 Grounds for Refusal. Except for the Preapproved Assignments, no assignment of this Agreement by Licensee is contemplated or bargained for. Without limitation, Licensor has the right to impose upon any consent to assignment such conditions and requirements as Licensor may deem appropriate.

16.9 Delayed Approval. Whether Licensor has timely responded to a request by Licensee for Licensor's consent to an assignment shall be determined based on 47 U.S.C. 537 and 47 C.F.R. 76.502(a); and the consequences of an untimely response by Licensor shall be as provided therein. Not more than forty-five (45) days nor less than thirty (30) days before any deadlines in such statute or regulation, Licensee shall give Licensor notice identifying the deadline and requesting that Licensor act.

16.10 Form of Assignment. Any assignment shall be by agreement in form and content acceptable to Licensor. Without limitation, any assignment shall specify and require that each assignee acquiring any interest under this Agreement shall assume and be bound by, and be obligated to perform the terms and conditions of this Agreement.

16.11 Consent to Assignments. Licensee shall attach to each Pre-approved Assignment a copy of Licensee's notice to Licensor of the Pre-approved Assignment and other required documents. Licensee shall attach to each other assignment, a copy of Licensor's notice to Licensee of Licensor's consent to the assignment. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any documents relating to an assignment.

16.12 Assignment Fee. Licensee shall pay to Licensor in advance the sum of Two Thousand Five Hundred Dollars (\$2,500) as a nonrefundable fee for legal, administrative and other expenses related to every Pre-approved Assignment (other than the sale of publicly traded stock) or to any request for a consent to assignment, whether or not Licensor grants such request.

XVII. MISCELLANEOUS

17. Miscellaneous. The following additional provisions apply to this Agreement:

17.1 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties.

17.2 Time of Essence. Time is of the essence of each and every provision of this Agreement.

17.3 Affiliate. Affiliate as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person and any subsidiary, guarantor, principal, partner, shareholder, employee, agent, franchisee, officer, director, licensor, licensee, investor, or lender. For the purposes of this definition, "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control") as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management, decisions or policies of that person, whether through the [ownership] of voting securities, by contract or otherwise, and "person" (for purposes of this definition and for purposes of this Agreement generally) means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

17.4 Survival of Liability. All obligations of Licensee and Licensor hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this Agreement for any reason.

17.5 Severability. If any provision of this Agreement shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, then:

17.5.1 The invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of this Agreement.

17.5.2 This Agreement shall be automatically reformed to secure to the parties the benefits of the unenforceable provision, to the maximum extent consistent with law.

17.6 Conflicts of Interest. No officer, representative or employee of Licensor shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

17.7 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

17.8 Nonliability of Officials and Employees. No official, representative or employee of Licensor shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Licensor or for any amount which may become due to any party or successor, or with respect to any obligation of Licensor or otherwise under the terms of this Agreement or related to this Agreement.

17.9 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Licensor: City Manager
City of Scottsdale
3939 North Drinkwater Boulevard
Scottsdale, AZ 85251

Copy to: Cable Television Administrator
City of Scottsdale
Information Systems
7384 E. 2nd Street
Scottsdale, AZ 85251

Copy to: City Attorney
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

If to Licensee: Vice President and General Manager
CoxCom, Inc.
Building C
1550 W. Deer Valley Road
Phoenix, AZ 85027

Copy to: Vice President Legal & Regulatory Affairs
Cox Communications, Inc.
1400 Lake Hearn Drive NE
Atlanta, GA 30319

By notice from time to time, a person may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

17.10 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence, memoranda and representation regarding the Right-of-way.

17.11 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Licensee.

17.12 Funding. This subparagraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. In the event funds necessary to fulfill Licensor's obligations under this Agreement are not appropriated by the Scottsdale City Council, Licensor may terminate this Agreement, by notice to Licensee. Licensor shall use best efforts to give notice of such a termination to Licensee at least thirty (30) days prior to the end of Licensor's then current fiscal period. Termination in accordance with this provision

shall not constitute a breach of this Agreement by Licensor. No person will be entitled to any compensation, damages or other remedy from Licensor if this Agreement is terminated pursuant to the terms of this subsection.

17.13 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

17.14 No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Licensor shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this Agreement.

17.15 Exhibits. All Exhibits specifically stated to be attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

17.16 Attorneys' Fees. In the event any action, suit or proceeding is brought by either party hereunder to enforce this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs (as determined by the court (and not a jury) in such proceeding).

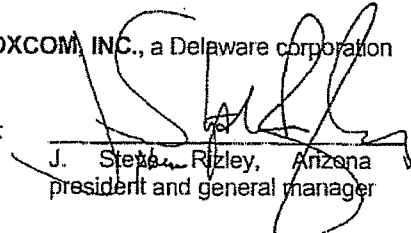
17.17 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Licensor has not waived its claims procedures as respects this Agreement. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County Superior Court or a Federal district court sitting in Maricopa County. City and Lessee consent to personal jurisdiction in such court.

17.18 Approvals and Inspections. All approvals, reviews and inspections by Licensor under this Agreement or otherwise are for Licensor's sole benefit and not for the benefit of Licensee, its contractors, engineers or other consultants or agents, or any other person.

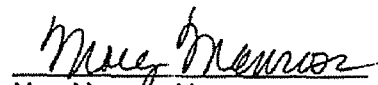
17.19 Statutory Cancellation Right. In addition to its other rights hereunder, Licensor shall have the rights specified in A.R.S. § 38-511.

EXECUTED as of the date first given above.

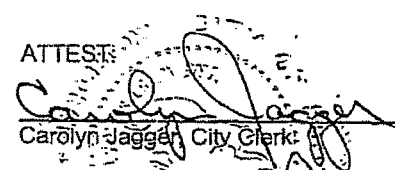
LICENSEE: **COXCOM, INC.**, a Delaware corporation

By: 
J. Stephen Rizley, Arizona vice
president and general manager

LICENSOR: **CITY OF SCOTTSDALE**,
an Arizona municipal corporation

By: 
Mary Manross, Mayor

ATTEST:


Carolyn Jaggar, City Clerk

APPROVED AS TO FORM:

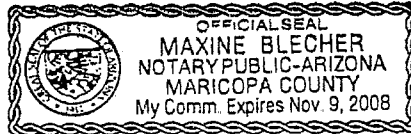

Deborah W. Robberson, City Attorney

STATE OF Arizona)
DELAWARE) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 18th day of May, 2007, by J. Steve Rizley, its Arizona vice president and general manager of CoxCom, Inc., a Delaware corporation.

My Commission Expires:

Nov 9, 2008



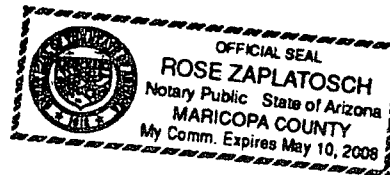
Maxine Blecher
Notary Public

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 6th day of June, 2007, by Mary Manross, mayor of the City of Scottsdale an Arizona municipal corporation.

My Commission Expires:

MAY 10, 2008



Rose Zaplatosch
Notary Public

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	3.8	Standards for letter of credit.

Note: *This page is not part of the agreement.]*

Standards for Letters of Credit

Each letter of credit (the "Letter of Credit") issued pursuant to this Agreement shall meet and be governed by the following standards and requirements:

1. General Requirements. The Letter of Credit must:
 - 1.1 Be clean, unconditional, and irrevocable.
 - 1.2 Be payable to Licensors upon demand.
 - 1.3 Be subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 190.
 - 1.4 Be conditioned for payment solely upon presentation of the Letter of Credit and a sight draft.
 - 1.5 Be transferable multiple times by Licensors and its successors without the consent of Licensee or the issuer.
 - 1.6 Meet all other requirements imposed by this Agreement.
2. Letter of Credit Fees. Licensee shall pay upon Licensors demand, as additional Fee Payment, any and all costs or fees charged in connection with the Letter of Credit, including without limitation, those that may arise due to:
 - 2.1 Licensors sale or transfer of all or a portion of the Right-of-way.
 - 2.2 The addition, deletion, or modification of any beneficiaries under the Letter of Credit.
3. Issuing Bank. The issuer of the Letter of Credit shall meet all of the following requirements:
 - 3.1 The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona.
 - 3.2 The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust company satisfactory to Licensors.
 - 3.3 The issuer shall have banking offices at which the Letter of Credit may be drawn upon in Maricopa County, Arizona.
 - 3.4 The issuer shall have a net worth of not less than \$1 billion.
4. Expiration of Letter of Credit. The term of the Letter of Credit must satisfy the following:
 - 4.1 The Letter of Credit shall have an original term expiring not sooner than the date twelve (12) months after the date it is delivered to Licensors.
 - 4.2 The Letter of Credit shall provide that it shall be automatically renewed for successive 12-month periods unless written notice of nonrenewal has been given by the issuing bank to Licensors not less than 60 days, nor more than ninety (90) days, prior to the expiration of the current period.
 - 4.3 If the issuing bank does not renew the Letter of Credit, and if Licensee does not deliver a substitute Letter of Credit at least 30 days prior to the expiration of the current Letter of

Credit, then, in addition to its other rights under this Agreement, Licensee shall be in default under this Agreement and Licenser shall have the right to draw on the existing Letter of Credit.

5. Draws. Licenser may draw upon the Letter of Credit as follows:

5.1 Licenser may use the proceeds of the Letter of Credit to remedy any breach by Licensee under this Agreement and to secure Licensee's performance under this Agreement.

5.2 Licenser may use, apply, or retain the proceeds of the Letter of Credit to the same extent that Licenser may use, apply, or retain any other Licensee funds or property to which Licenser may have access.

5.3 Licenser may draw on the Letter of Credit, in whole or in part, from time to time, at Licenser's election.

5.4 Within ten (10) days after Licenser gives Licensee notice that Licenser has drawn down the Letter of Credit, Licensee shall restore all amounts drawn by Licenser, or substitute cash security instead.

5.5 In the event the required amount of the Letter of Credit increases from time to time, Licensee shall, from time to time, on or before the date of the increase, deliver to Licenser an additional letter of credit in the amount of such increase, or cause the existing Letter of Credit held by Licenser to be amended to increase its amount.

5.6 Licenser may draw upon the Letter of Credit as otherwise permitted by this Agreement.

6. Cooperation by Licensee. Licensee shall promptly execute and deliver to Licenser any and all modifications, amendments, and replacements of the Letter of Credit, as Licenser may reasonably request.

7. Replenishing Letter of Credit. Whenever Licenser draws on the letter of credit, Licensee shall cause the institution that issued the letter of credit, to give notice to Licenser within ten (10) days that the letter of credit has been replenished to its full original amount.

8. Other Provisions. Licenser shall also have such additional rights with respect to the Letter of Credit as are provided elsewhere in this Agreement.

COPY

RESOLUTION NO. 7110

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2007-004-COS, A CABLE TELEVISION LICENSE FOR THE CONSTRUCTION, INSTALLATION AND OPERATION OF A CABLE TELEVISION NETWORK IN THE CITY'S RIGHTS-OF-WAY

WHEREAS, pursuant to Chapter 7 of the Scottsdale Revised Code entitled "Cable Television" the City is authorized to grant, renew, deny, amend and terminate Licenses for the installation, operation and maintenance of Cable Systems and otherwise regulate cable television within the City's boundaries by virtue of federal and state statutes, the City's police powers, its authority over its public rights-of-way, and other City powers and authority; and


WHEREAS, since November 1996 CoxCom, Inc. and its predecessors in interest have maintained and operated a cable system in the City of Scottsdale pursuant to Ordinance No. 1461 dated April 6, 1982 (area south of Deer Valley Road), and Ordinance No. 1911 dated August 18, 1986 (area north of Deer Valley Road),

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:


Section 1. Mary Manross, Mayor, is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Contract No. 2007-004-COS, a cable television license for the continued construction, installation and operation of CoxCom, Inc.'s cable television network within the City of Scottsdale.

PASSED, ADOPTED AND APPROVED by the Council of the City of Scottsdale this 5th day of June, 2007.

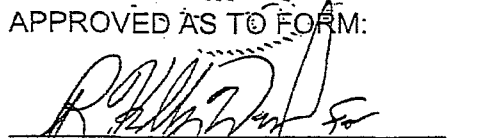
ATTEST:


Carolyn Jagger, City Clerk

CITY OF SCOTTSDALE, an Arizona
municipal corporation


Mary Manross, Mayor

APPROVED AS TO FORM:


Deborah W. Robberson, City Attorney
3220777v1

SECTION G

CITYCABLE PROGRAMMING GUIDELINES

General Guidelines

Overall focus of CityCable programming

CityCable 11 is a Government Access Channel operated by the City of Scottsdale. The primary mission of the CityCable staff is to provide televised coverage of and information about the public decision-making process and about city programs and services.

Programs produced by CityCable 11 will have first priority in programming the channel.

Programming responsibilities

The video production manager is responsible for the day-to-day scheduling of programming on the channel and assuring that programming meets technical standards for production quality. The public affairs officer is responsible determining whether existing or proposed programming is consistent with CityCable priorities and policies.

Priorities for subject matter for CityCable productions

CityCable's top priority is to broadcast City Council meetings and other public meetings of general interest. In times of emergency, the top priority is the dissemination of accurate and timely information vital to public safety and welfare.

Other priorities for programs produced by CityCable are informing viewers about city issues, highlighting opportunities for public involvement, explaining city programs and services, and informing viewers about Scottsdale's economy, history, culture, arts and significant community activities. The channel may also produce programs on issues, programs and services at other levels of government that are relevant to Scottsdale viewers, or programs that help explain Scottsdale's role in the economy, history and culture of the region and state.

City-produced community-interest shows hosted by or featuring outside parties

CityCable may produce programming hosted by or featuring persons other than city officials or employees if:

- The program does not promote a business or a specific organization. Regularly scheduled programs, for example, should not incorporate the name of a business or organization in the title. However, if the business or organization's activities may be featured under the "Programming from outside sources" guidelines, these activities may also be featured during a CityCable production.

- The host or featured guest has expertise that cannot be provided by a city official or a member of the city staff. Such expertise may include knowledge about specific aspects of the city's history, personal involvement in historic or cultural events or special technical knowledge.
- The program's purpose is to provide information on the city's history, culture, arts, economy, or to provide neutral, fact-based information on current city issues.

8/1/08

Programming from outside sources

CityCable may air programming produced by third parties -- including brief public service announcements, interviews, documentary-style programming and other programming -- if it meets one of the following criteria and meets standards for technical quality as determined by the video production manager. The criteria are listed in priority order, and CityCable will consider these priorities in determining whether there is sufficient time within the programming schedule.

- 1. Government programs.** CityCable may air programs produced by other governments -- such as local school districts, Maricopa County, public colleges and universities, agencies of the State of Arizona or the federal government, provided that such programs are devoted to topics of interest or concern to Scottsdale residents.
- 2. Formal relationships with the city.** CityCable may air programming provided by a third party -- such as a non-profit organization -- that provides services to Scottsdale citizens under a contract, a sponsorship agreement or other formal relationship with the city. Events or programs held at city-owned and operated facilities such as Scottsdale Stadium and WestWorld are not considered city-sponsored events unless they meet the above criteria, e.g., are "signature" events which receive Tourism Development funds or other city funding or in-kind services. Generally, priority should be given to those events or programs in which the city has the greatest overall investment.
- 3. Formal relationships with another government.** CityCable may air programs produced by non-governmental entities that are under contract, sponsored by or have a formal agreement with other government agencies, such as the state, county or public educational institutions. CityCable will give higher priority to programs that have a direct bearing on services or timely issues affecting Scottsdale residents.
- 4. Traffic impacts.** The City may air third-party produced information on large events that may affect traffic, as long as it is clear that the city is broadcasting the information primarily to inform motorists and nearby businesses and residents about potential traffic impacts. In general, these events would be of sufficient size to warrant review by the Special Events Committee.

5. Economic or general neighborhood impacts: CityCable may use third-party produced programming that provides relevant information on major new employers or retailers closing or opening operations within Scottsdale. The main purpose of such programming must be informing neighbors of potential traffic, noise, construction or other impacts, as well as effects on surrounding businesses. Major employers generally would include those who expect to employ more than 100 people; major retailers are businesses that would be considered "anchor" tenants in a retail center, or that occupy more than 75,000 square feet.

6. Special citywide interest. In rare cases, CityCable may air material provided by outside entities that does not meet the above criteria, but is of sufficient cultural, historic or economic interest across the city to warrant coverage. In such cases, the programming should include an introductory statement from a city official explaining the significance of the program's subject and why it is of extraordinary interest to the community.

8/1/08

Guidelines for Election Coverage

Appearances by candidates seeking election or re-election to the City Council

In the period between the deadline for filing petitions to run for Mayor or City Council and the day after the election, CityCable will not produce interview programs, public service announcements or other special programs that feature a Mayor or City Council member who is seeking reelection, or any other candidate in a City election.

During this period, CityCable will continue to air programs that include the Mayor or members of the City Council in the normal course of their duties (e.g., at City Council meetings or city-sponsored public events). This guideline also does not preclude CityCable from broadcasting public meetings or city-sponsored events where candidates for City Council are present and participating in the city function in the normal course of business.

Last revised: 8/7/03

Appearances by other elected officials or candidates seeking public office

CityCable will, as resources allow, air video tapes provided by or featuring local, state or federal elected officials other than the Scottsdale Mayor and City Council, provided that the main purpose of the program is to provide information and perspectives on current issues pertaining to the official's public office. Officials such as U.S. Representatives and Maricopa County Supervisors have provided such programs to report to their